BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS – Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

Arizona Corporation Commission
DOCKETED
FEB 10 2020
DOCKETED BY

IN THE MATTER OF:

ROBERT J. MOSS AND JENNIFER L. MOSS, husband and wife,

THE FORTITUDE FOUNDATION, an Arizona corporation,

VENTURES 7000, LLC, an Oklahoma limited liability company,

JEFFREY D. McHATTON AND STARLA T. McHATTON, husband and wife,

ROBERT D. SPROAT AND JANE DOE SPROAT, husband and wife,

KEVIN KRAUSE, a single man, and

VERNON R. TWYMAN, JR., a single man,

Respondents.

DOCKET NO. S-20953A-16-0061

DECISION NO. 77547

OPINION AND ORDER

DATES OF HEARING: April 20, 2016, and May 25, 2016 (Pre-Hearing Conferences), February 21 – 23, 27 – 28, March 1 – 2, 6 – 8, May 1 – 3, 2017 (Evidentiary Hearing).

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Marc E. Stern[1]

APPEARANCES: Mr. Robert D. Mitchell and Ms. Sarah K. Deutsch, TIFFANY & BOSCO, P.A., on behalf of Vernon R. Twyman, Jr. and Ventures 7000, LLC;

Mr. Robert J. Moss, Pro per;

Mr. Jeffrey D. McHatton and The Fortitude Foundation, Pro per; and

[1] Administrative Law Judge Marc E. Stern presided at the hearing and during all pre-hearing matters; ALJ Belinda A. Martin prepared the Recommended Opinion and Order ("ROO") under the direction and supervision of ALJ Stern. ALJ Stern and ALJ Martin extensively discussed the findings and conclusions in this ROO.

Mr. James D. Burgess, Staff Attorney, on behalf of the Securities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

PROCEDURAL HISTORY

1. On February 23, 2016, the Securities Division ("Division") of the Commission filed a Temporary Order to Cease and Desist ("T.O.") and a Notice of Opportunity for Hearing ("Notice") against Robert J. Moss and Jennifer L. Moss, husband and wife, The Fortitude Foundation ("TFF"), an Arizona Corporation, Ventures 7000, LLC ("V-7000"), an Oklahoma limited liability company, Jeffrey D. McHatton and Starla T. McHatton, husband and wife, Robert D. Sproat and Jane Doe Sproat, husband and wife, Kevin Krause, a single man, and Vernon R. Twyman, Jr., a single man, (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona Securities Act ("Securities Act") in connection with the offer and sale of securities in the form of investment contracts, stock and promissory notes. Respondent spouses, Jennifer L. Moss, Starla T. McHatton and Jane Doe Sproat, were joined in the action solely for the purpose of determining the liability of the respective marital communities pursuant to A.R.S. 44-2031(C).

2. On March 24, 2016, counsel for Mr. McHatton and TFF filed a request for hearing in this matter, and a Stipulation that extended the date for the filing of their Answer to April 11, 2016.

3. On March 31, 2016, by Procedural Order, a pre-hearing conference was scheduled on April 20, 2016.[2]

4. On March 31, 2016, Mr. Moss filed a request for hearing and further requested 30 days to retain counsel and to file an Answer to the T.O. and Notice.[3]

5. On April 4, 2016, by Procedural Order, it was found that ample time would be available

[2] As of the date of the First Procedural Order, the following Respondents had been duly served with copies of the T.O. and Notice: the Mosses; V-7000; the McHattons; TFF; and Kevin Krause.

[3] Mr. and Mrs. Moss, in their request for a hearing, appeared to also request similar relief for TFF.

for Mr. and Mrs. Moss to retain counsel and that the pre-hearing conference could go forward on April 20, 2016, as previously ordered.

6. On April 6, 2016, the Division filed a response to the request for a 30-day delay by Mr. and Mrs. Moss.

7. The Division noted that Mr. and Mrs. Moss had been served on March 10, 2016, and the Division objected to the lengthy delay requested by Mr. and Mrs. Moss to file their Answer. Instead the Division proposed only a 10-day extension from the current due date of April 11, 2016, to April 21, 2016.

8. On April 8, 2016, by Procedural Order, Mr. and Mrs. Moss were ordered to file their Answer by April 29, 2016.

9. On April 11, 2016, Mr. and Mrs. McHatton and TFF filed their respective Answers.

10. On April 20, 2016, at the initial pre-hearing conference, counsel for the Division and counsel for the McHattons and TFF appeared. The Mosses did not appear, and counsel was not present on their behalf. After a brief discussion, it was learned that the Mosses had inadvertently not been added to the proceeding's service list and that they did not receive notice of the pre-hearing that had originally been scheduled on April 20, 2016.

11. On April 21, 2016, by Procedural Order, the pre-hearing conference was rescheduled to May 18, 2016, with notice provided to all parties who had requested a hearing or their attorney of record.

12. On April 28, 2016, the Mosses filed their Answer.

13. On April 29, 2016, the Division, the McHattons and TFF filed a Joint Motion to reschedule the pre-hearing conference scheduled on May 18, 2016. Counsel for the parties cited conflicting matters and suggested alternate dates for the proceeding to be rescheduled on May 24th, 25th or 26th, 2016.

14. On May 3, 2016, by Procedural Order, the pre-hearing conference was rescheduled to May 25, 2016.

15. On May 5, 2016, counsel for the McHattons and TFF filed an Application to Withdraw as the counsel of record for the McHattons and TFF. Counsel indicated that the Application to

Withdraw was being made without the consent of their clients. Counsel further indicated that "conflicts" required their withdrawal from the proceeding. It was also indicated that the McHattons and TFF had been advised of all dates pending in the proceeding.

16. On May 6, 2016, a request for hearing was filed for V-7000 by its manager, Vernon R. Twyman, Jr., another named Respondent who had apparently not yet been served.

17. On May 10, 2016, the Division filed its response to the McHatton's and TFF's counsel's Application to Withdraw, stating that the Division did not oppose the it.

18. On May 12, 2016, by Procedural Order, the Application to Withdraw by counsel for the McHattons and TFF was granted.

19. On May 25, 2016, at the pre-hearing conference, the Division appeared with counsel. Mr. Moss, Jeffery McHatton and Starla McHatton appeared on their own behalf. Several Respondents remained to be served and Mr. Krause, who had been served, had not requested a hearing. The Division indicated that it planned to amend the Notice and requested that a hearing be scheduled.

20. On July 1, 2016, by Procedural Order, a hearing was scheduled to commence on September 19, 2016. As indicated at the pre-hearing conference, the Division filed a Motion for Leave to File Amended Temporary Order and Notice ("Motion for Leave to Amend").

21. No responses were filed to the Division's Motion for Leave to Amend.

22. On July 14, 2016, by Procedural Order, the Division's Motion for Leave to Amend was granted.

23. On July 19, 2016, the Division filed the Amended Temporary Order and Notice ("Amended T.O. and Notice").

24. On July 21, 2016, the Mosses and TFF filed a response to the Amended T.O. and Notice, requesting a hearing and a 30-day extension of time to file an Amended Answer and for the exchange of the Witness Lists and Exhibits.

25. On July 26, 2016, the Division filed a response to the request for a 30-day delay by the Mosses to file their Amended Answer and for the exchange of Witness Lists and Exhibits. The Division stated that, based on the service date of the Amended T.O. and Notice, the Moss' Amended Answer is not due until August 19, 2016, and that if they were granted a 30-day extension to file their Amended

Answer, until September 19, 2016, that date is the date that the hearing is scheduled to commence. Further, the Division argued that the Mosses had not shown good cause for an extension of time to file their Amended Answer and to exchange Witness Lists and Exhibits.

26. On August 2, 2016, counsel for V-7000 and Mr. Twyman entered an appearance.

27. On August 4, 2016, the McHattons, and also claiming representation on behalf of TFF, filed a response to the Amended T.O. and Notice requesting a hearing and a 15-day extension of time to file an Amended Answer and for the exchange of Witness Lists and Exhibits.

28. On August 4, 2016, Mr. Krause filed a response to what appeared to be the Amended T.O. and Notice in the form of an Answer. Mr. Krause had not appeared in the earlier proceedings, but this filing was treated as a request for hearing and Answer by Mr. Krause appearing on his own behalf.

29. On August 5, 2016, the Division filed a response which contained a Motion to Extend Date to Exchange Witness Lists and Exhibits pending the outcome of a Motion to Continue Hearing which the Division anticipated would be filed by counsel for Mr. Twyman and V-7000 after contact between counsel for the Division and counsel for Mr. Twyman and V-7000. The Division stated that the date for the exchange of Witness Lists and Exhibits had passed (August 5, 2016), and requested that the exchange be postponed until the issue was decided on the anticipated Motion for a Continuance by Mr. Twyman and V-7000 so that an actual exchange can take place prior to the hearing, rather than the Division unilaterally providing its Witness List and Exhibits to the Respondents.

30. On August 8, 2016, the Mosses filed an Answer to the Amended T.O. and Notice.

31. On August 9, 2016, by Procedural Order, although unknown whether a Motion for a Continuance would be filed by the counsel for Mr. Twyman and V-7000, an extension for the exchange of the Witness Lists and Exhibits was granted until August 31, 2016.

32. On August 9, 2016, after the August 9, 2016, Procedural Order had been issued, Mr. Twyman and V-7000 filed a request for hearing and a motion for at least a 90-day continuance citing a need for discovery and a need for additional time to prepare for the hearing.

33. On August 11, 2016, the Division filed a Response to the Motion for a Continuance by Mr. Twyman and V-7000 objecting to a continuance.

34. On August 16, 2016, Mr. Twyman and V-7000 filed a Reply to the Division's August

11, 2016, Response arguing that a continuance would not prejudice any party.

35. On August 19, 2016, Mr. Twyman and V-7000 filed their Answer to the Amended T.O. and Notice.

36. On August 23, 2016, by Procedural Order, a brief continuance of the hearing was granted from September 19, 2016 to October 31, 2016, to allow the parties to adequately prepare for the proceeding. To ensure that the exchange of Witness Lists and Exhibits would be orderly, the date for the exchange was extended to September 16, 2016.

37. On August 31, 2016, the Division filed a Motion to Continue the hearing that had been continued to October 31, 2016, stating that its counsel would have a conflict with the preparation for a another proceeding that had been scheduled earlier to commence on November 28, 2016. The Division requested that this proceeding be continued to a date early in 2017.

38. On September 6, 2016, Mr. Twyman and V-7000 filed a Response to the Division's Motion to Continue and stated that they did not oppose a continuance. Respondents' counsel further stated that he had two previously scheduled Financial Industry Regulatory Authority arbitrations in January 2017, and indicated that he would be available for a hearing in February 2017. Counsel also requested that the deadline for the exchange of Witness Lists and Exhibits be extended to 60 days prior to the commencement of the hearing.

39. On September 12, 2016, the Division filed its Reply in support of its outstanding motion and stated that the Division is available for a hearing in February 2017 and did not oppose the exchange of Witness Lists and Exhibits 60 days prior to the commencement of the hearing.

40. On September 16, 2016, by Procedural Order, the hearing was continued until February 21, 2017, and the exchange of Witness Lists and Exhibits was extended to 60 days before the commencement of the hearing.

41. On January 17, 2017, the Division filed a motion to allow telephonic testimony and in support of the motion stated that certain witnesses would testify to relevant matters, but to travel and appear in Phoenix would be prohibitively expensive for them. There were no objections to the motion.

42. On January 30, 2017, by Procedural Order, the Division's motion to allow telephonic testimony was granted.

43. On February 21, 2017, the hearing in this matter commenced at the Commission's offices in Phoenix, Arizona. Additional days of hearing followed on February 22 – 23, and 27 – 28.

44. On March 1, 2017, Mr. McHatton sent an email to the other parties to the proceeding and to the presiding Administrative Law Judge informing them that he was ill and unable to participate that day, but did not object to the hearing proceeding without him so long as he would be able to cross examine Mr. Twyman upon his anticipated return the next day, March 2, 2017.

45. On March 2, 2017, Mr. McHatton was unable to attend the scheduled hearing, as his condition had worsened, and the cross examination of Mr. Twyman continued without Mr. McHatton present.

46. On March 6, 2017, the proceeding continued with Mr. McHatton again absent as the Division concluded its cross examination of Mr. Twyman. The proceeding was recessed until March 7, 2017, when it was anticipated that Mr. McHatton would be available to cross examine Mr. Twyman. It was also anticipated that the presentation of evidence by Mr. Moss and Mr. McHatton would take place on March 7, 2017, followed by their cross examination. At that time, it appeared that the hearing would be concluded by March 8, 2017. However, late in the afternoon of March 6, 2017, Mr. McHatton filed a request for a continuance of the matter from March 7, 2017, until March 8, 2017, due to the time required for the treatment of his ongoing illness.

47. On March 7, 2017, the hearing reconvened with the Division appearing with counsel, V-7000 and Mr. Twyman appearing with counsel and Mr. Moss appearing on his own behalf. After a brief discussion between the parties, it was determined that Mr. McHatton's request would be granted and the hearing continued to March 8, 2017, so that Mr. McHatton could be present.

48. On March 8, 2017, the hearing reconvened. The Division appeared with counsel, V-7000 and Mr. Twyman appeared with counsel, and Mr. Moss and Mr. McHatton appeared on their own behalf. At the outset, counsel for the Division stated that he was extremely ill and requested a continuance. Respondents and their counsel agreed to a continuance; however, due to scheduling conflicts, it was determined that the hearing would have to be continued to May 1, 2017, with May 2 and 3, 2017, also scheduled, if needed.

49. The hearing concluded on May 3, 2017.

50. On May 3, 2017, Mrs. McHatton filed what was captioned as "Request for Separation of the Personal Assets of Starla T. McHatton from the Action and Order to Cease and Desist Regarding the Actions and Activities of the Fortitude Foundation" ("Request"). Mrs. McHatton stated in the Request that prior to and during her marriage to Jeffrey D. McHatton, all of her individual assets were held separate and apart from the community assets. Further, she stated that she did not share in the actions or the activities of TFF, and that her sole source of income is from the Social Security Administration in the form of disability income "kept separate and apart from that of the community." Lastly, Mrs. McHatton maintained that the community "was not enhanced by TFF's actions."

51. On May 22, 2017, the Division filed a response to Mrs. McHatton's Request, noting that Mrs. McHatton failed to appear and defend herself at the hearing. The Division stated that if the Commission finds that Mr. McHatton violated the Securities Act, and is found liable for restitution and penalties, Arizona law provides that a presumption of a community obligation arises "when either spouse incurs a debt during marriage for the benefit of the marital community." *United Bank of Ariz. V. Allyn*, 167 Ariz. 191, 198 (App. 1990). According to the Division, there was no evidence presented at hearing that if Mr. McHatton is found liable for violations of the Securities Act, and restitution and penalties are ordered, they should be his separate debt. However, the Division acknowledged that, as a matter of law, Mrs. McHatton's separate property cannot be used to satisfy any restitution or penalties the Commission may order for her husband's violations of the Securities Act.

52. Lastly, the Division cited evidence presented during the hearing that Mrs. McHatton and the marital community benefitted from Mr. McHatton's alleged violations of the Securities Act, citing bank records that establish that investor funds were transferred from TFF's bank account to Mr. and Mrs. McHatton's joint checking account and used for payments for Direct TV service, movie theater tickets, and for nail and spa treatments.

53. On June 8, 2017, a Procedural Order was issued stating that, under the circumstances, and at that time, there was insufficient evidence to make a determination concerning what is Mrs. McHatton's separate property and what is community property if Mr. McHatton is subsequently found in violation of the Securities Act, and liable for restitution and administrative penalties. Additionally, the Procedural Order noted that any such restitution and administrative penalties will be subject to

A.A.C. R14-4-308, and collection under Arizona law in the Superior Court of Arizona where a determination would ultimately be made concerning the status of the McHattons' assets and whether they are separate or community property. As such, the Procedural Order denied Mrs. McHatton's Request.

54. On June 26, 2017, the Division filed its Opening Post-Hearing Brief.

55. On July 25, 2017, Mr. McHatton filed a Request for 30-day Extension for Filing the Required Response to the Division's Brief.

56. On July 26, 2017, the Division and Mr. Twyman and V-7000 filed a Stipulation to Extend Post-Hearing Briefing Deadlines, seeking a 30-day extension to file post-hearing briefs and reply post-hearing briefs.

57. On September 1, 2017, the Mosses filed their Post-Hearing Brief (Answer) Memorandum.

58. On September 1, 2017, Mr. Twyman and V-7000 filed their Post-Hearing Brief.

59. On September 1, 2017, Mr. McHatton filed a Request for Extension to September 7, 2017, for filing the Required Response to the Division's Brief.

60. On September 7, 2017, Mr. McHatton filed his Response Brief.

61. On October 6, 2017, the Division filed its Reply Post-Hearing Memorandum regarding Respondents Mr. and Mrs. Moss, Mr. Jeffrey McHatton and The Fortitude Foundation.

62. On October 6, 2017, the Division filed its Reply Post-Hearing Memorandum regarding Respondents Vernon R. Twyman, Jr. and V-7000, LLC.

63. On August 20, 2018, counsel for investors Tim and Peggy Brunt filed an Application for Leave to Intervene to Correct Testimony. Tim Brunt stated that he wanted to correct his testimony provided at hearing on March 1, 2017, in which he stated that he did not want restitution. Mr. Brunt explained that by the end of the hearing, he believed that Mr. Moss and Mr. McHatton mislead him and made misrepresentations about the nature of certain investments. As such, Mr. Brunt wished to correct his testimony to state that, if the Commission orders restitution, Mr. Brunt wishes to be included in those orders.

64. On August 22, 2018, the Division filed a Response to Mr. and Mrs. Brunt's Application

for Leave to Correct Testimony, stating the Division did not oppose to intervention.

65. On September 4, 2018, Mr. McHatton filed an Answer to the Application for Leave to Intervene to Correct Testimony filed by Mr. and Mrs. Brunt, stating that the McHattons and TFF did not oppose the request for restitution if the court ordered it, but they did object to the additional after the fact testimony regarding misrepresentations because Mr. McHatton and TFF believed that there was no evidence that any misleading statements or misrepresentations were made.

66. On June 17, 2019, a Procedural Order was issued granting Mr. and Mrs. Brunt's Application for Leave to Intervene to Correct Testimony for the limited purpose of allowing Tim and Peggy Brunt to be included in any award of restitution.

THE RESPONDENTS

The Fortitude Foundation, an Arizona Corporation

67. TFF is an Arizona non-profit corporation formerly known as Charles E. McHatton Ministries, Inc., which was incorporated on April 10, 1992.[4] Mr. McHatton is the son of Charles E. McHatton, who passed away in 2008.[5] Jeffrey McHatton testified that after his father died, "his [Jeffrey McHatton's] direction for moving forward with [TFF] was to create the revenues necessary to support charitable purposes."[6]

68. TFF is not, and never has been, registered with the Commission as a securities dealer.[7]

69. In an information sheet regarding TFF's goals and mission,[8] TFF states:

> Originally established in 1996,[9] and re-named The Fortitude Foundation (TFF) in 2010 by three (3) men of God who were called with a Divine purpose to help heal the needy, and in doing so bring salvation to their hearts for the Kingdom of God. Each of the founders knows what it is like to hurt in every area of life and that God has the answer to each of those hurts. The founders of Fortitude Foundation are comprised of a preacher [Mr. McHatton], an entrepreneur [Mr. Sproat] and a U.S. soldier [Mr. Moss]. God has blessed the Foundation with finances for such a time as this, to be able to help heal the world and show the world the love of the Father, in a tangible way. "As One" (power team) the call of the Lord on their lives is to advance His Kingdom by creating jobs, that fund and finance new technologies through many different channels, that ultimately, bring the salvation and love of Jesus Christ, to this needy and destitute world.[10]

[4] S-4; Hearing Transcript ("Tr.") Tr. at 1297.
[5] Tr. at 1297.
[6] Tr. at 1298.
[7] S-1(a).
[8] S-81.
[9] S-4 indicates that Charles E. McHatton Ministries, Inc.'s Articles of Incorporation were dated April 10, 1992, not 1996.
[10] S-81.

70. In the information sheet, TFF states that TFF has "over 5,000 completed new Business Plans requiring financial fuel," "[h]umanitarian projects Locally, Regionally, Nationally & Globally," and currently has "projects totaling $5 Billion Dollars [*sic*] – Globally."[11]

71. TFF's promotional materials provided to investors state: "TFF's Charter requires that it distribute 90% of net earned income to further [philanthropic and humanitarian] causes."[12] The Division subpoenaed TFF to produce TFF's Charter and all records of TFF's distributions to support philanthropic, charitable, humanitarian causes.[13] The Division notes that TFF did not produce any responsive documents, stating that "No responsive documents exist at this time."[14]

Jeffrey D. McHatton and Starla T. McHatton

72. Jeffrey D. McHatton and Starla T. McHatton have been married since 2004 and live in Arizona.[15] Mr. McHatton has been a director of TFF since January 1, 2001, and TFF's president since January 31, 2008.[16] Mr. McHatton testified that he worked primarily as a pastor but also worked in real estate with a specialization in mortgage financing.[17] Mr. McHatton asserts that he has no experience with stocks, bonds, or alternative assets.[18] According to Mr. McHatton, he had very little to do with the offers and sales of any investments, stating: "[T]his was way beyond my skill set, way beyond my experience level, I didn't feel qualified, nor capable, even, of discussing some of these things with potential lenders that were involved through both Mr. Moss's and [Robert] Sproat's networks."[19]

73. Mr. McHatton is not, and never has been, registered with the Commission as a securities dealer or a sales person.[20]

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[11] S-81.
[12] S-27.
[13] S-102.
[14] S-104.
[15] Tr. at 1291 - 1292.
[16] Original Notice at ¶ 8.
[17] Tr. at 1292.
[18] Tr. at 1293.
[19] Tr. at 1300.
[20] S-2.

Robert J. Moss and Jennifer L. Moss

74. Respondent Robert J. Moss testified at the hearing and also participated in examinations under oath ("EUO") on June 16, 2015,[21] and August 18[22] and 23,[23] 2016.

75. Mr. Moss and Jennifer L. Moss were married in 1991, and have lived in Arizona since 1992.[24] Mr. Moss has been a director and/or a trustee, or held himself out as being a director or trustee, of TFF from at least June 20, 2012, until at least August 2016.[25] From approximately July 2013 through March 2016, Mr. Moss was also on the Board of Directors of V-7000.[26] Mr. Moss stated that for the past 25 years, he has been a subcontractor as a strategic business advisor and/or a business development consultant through his business TMC Consultants, Inc.[27] Mr. Moss testified:

> My specialties have been bringing together the top minds in corporate finance in order to create vision, enhance growth strategies, develop sound, what call, realationships, where there's trust in transaction and accelerated business profitability. I am considered by my peers a reign-maker, and it's R-E-I-G-N, and a master networker of networks in several finance and funding related industries spanning over the past 25 plus years.[28]

76. In an August 26, 2008, Desist and Refrain Order ("2008 California Desist and Refrain Order"), in a matter unrelated to TFF's transactions, a California Corporations Commissioner concluded that Mr. Moss had committed securities fraud by selling unqualified securities by means of misrepresentations and omissions of a material fact in violation of the anti-fraud provision of Section 25401 of California's Corporate Securities Law of 1968.[29] The 2008 California Desist and Refrain Order prohibited Mr. Moss from "offering or selling any securities in the State of California … by means of any written or oral communication which includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."[30]

77. Mr. Moss believes that the 2008 California Desist and Refrain Order is irrelevant to this

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[21] S-92.
[22] S-93.
[23] S-94.
[24] Tr. at 1037, 1167; S-93 at 20.
[25] Tr. at 1169 – 1171; S-105(a) and (d); S-93 at 55 – 56.
[26] Tr. at 1179.
[27] Tr. at 1037 – 1038.
[28] Tr. at 1038.
[29] S-88.
[30] S-88.

proceeding since none of the investors are California residents.[31]

78. Mr. Moss is not, and never has been, registered with the Commission as a securities dealer or a sales person.[32]

79. Mr. Moss testified that he was introduced to Mr. McHatton in 2010 by Mr. Sproat and a mutual friend.[33] At first, Mr. Moss began working with Mr. McHatton and the Charles E. McHatton Ministries reviewing real estate opportunities. Mr. Moss stated that he was introduced to Mr. Twyman in the fall of 2011. Mr. Moss related:

> In the spring of 2012 [Mr. McHatton] and I began reviewing a number of potential projects in a myriad of asset classes. These included appreciated asset giving funds, commodity based buy/sell opportunities, such as historic bonds, high yield international instruments, or CELP, which is cash enhancement loan programs, CRUT, which is a charitable remainder unitrust insurance product, and then other commodities such as food, which included rice, wheat, and water, gold, the LAL, low alpha lead, insurance viaticals, better known as life settlement portfolios, oil and gas or petro contracts, nickel wire, and REO, which is the real estate foreclosures directly through the banks, as well as silver. These were some of the asset classes in which we reviewed did due diligence, and established some asset class managers and some subsequent projects that we ultimately went in.[34]

Robert D. Sproat and Jane Doe Sproat

80. Respondent Robert D. Sproat did not respond to the Division's Notice and did not participate at hearing. Mr. Sproat has been a director and/or a representative, or held himself out as being a director or representative, of TFF from at least June 20, 2012, until at least August 6, 2013.[35]

81. Mr. Moss stated that on July 23, 2013, he and Mr. McHatton had a meeting with Mr. Sproat. Mr. Moss testified about the conversation with Mr. Sproat stating that:

> [The meeting] was in and around being authentic, and how that authenticity is an important part of positively impacting other people in their lives. We discussed our desires that were delivered in love for Robert to experience the freedom that comes from simply being himself. We both knew that there was freedom in being honest and embracing your imperfections instead of trying to cover them up. Ultimately, we wanted him to discover the freedom that God offers embracing the fact that God is more concerned with one's progress rather than their performance. We shared with him his strengths, areas in which he was doing well, and also some of his weaknesses, areas that needed improvement.
>
> This conversation was not meant to be harsh or hurtful. Yes, it was a dose of some tough love and, if he swallowed some of his pride, we believed that he could change in concert with the power of the Holy Spirit. We told him there was no way at this time for him to be

[31] Tr. at 1070 – 1072.
[32] S-2.
[33] Tr. at 1075.
[34] Tr. at 1076.
[35] S-105(d); S-78.

> considered a TFF director or a partner. We were here in his life at this moment to help him by holding him accountable for what he said and for what he did. We expressed our disappointment and made certain that he understood that he had zero authority to obligate either TFF, either Jeff McHatton, or myself, to anyone or anything.
>
> Our delivery was in love. Jeff came with a pastor's heart to provide counsel and help restore the relationship. We did not condemn him but told him how you do one thing is how you do everything.
>
> Unfortunately and subsequently we had learned on [*sic*] a few more episodes of his magical and wishful thinking.[36]

82. Two years later, on April 30, 2015, an email to Mr. Sproat purportedly from the board of directors of TFF[37] directed Mr. Sproat to that he was to "immediately cease and desist any further activity of any sort relating to TFF…."[38]

83. Mr. Sproat is not, and never has been, registered with the Commission as a securities sales person or dealer.[39]

Kevin Krause[40]

84. Respondent Kevin Krause filed an answer to the Division's Notice, but otherwise he did not participate in the proceedings.

85. Mr. Moss testified at his EUO that he met Mr. Krause through Mr. Sproat in early 2012, and Mr. Moss believes that Mr. Twyman also met Mr. Krause during meetings in Phoenix.[41] Mr. Krause acted as a securities sales person for TFF and received at least one sales commission payment on May 23, 2013.[42]

86. The Division notes that Mr. Krause has two prior Commission orders entered against him for committing securities fraud and registration violations ("2006 Krause Orders"). On February 2, 2006, in Decision No. 68460, the Commission found that Mr. Krause had violated A.R.S. §§ 44-1841, 44-1842, and 44-1991 by making material misrepresentations and omissions in connection with his sales of investments involving gas wells and a purported real estate development in Mexico.[43] In

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[36] Tr. at 1116 – 1117.
[37] Mr. Moss produced the email, but the "From" line is redacted.
[38] TFF-00009.
[39] S-2.
[40] In its Amended Notice alleged that Mr. Krause was married. However, at hearing, the Division presented evidence that the woman thought to be Mr. Krause's wife is not, and never was married to Mr. Krause. S-119; Tr. at 176-177.
[41] S-93 at 113 – 114.
[42] Tr. at 387 – 388, 467; S-38.
[43] S-39.

Decision No. 68461 (February 2, 2006), the Commission found that Mr. Krause had committed securities fraud and registration violations in connection with his sale of investment contracts involving an oil well.[44]

87. In both of its 2006 Orders against Mr. Krause, the Commission ordered Mr. Krause to cease and desist from violating the Securities Act, to disgorge his commissions from the unlawful sales, and imposed administrative penalties.[45]

88. Mr. Krause is not, and never has been, registered with the Commission as a securities dealer or a sales person.[46]

Vernon R. Twyman[47]

89. Mr. Twyman has been the manager, a director, and an executive officer of V-7000 since at least July 9, 2013.[48]

90. On November 4, 1998, the United States Securities and Exchange Commission ("S.E.C.") in the U.S. District Court for the Northern District of Oklahoma issued a Final Judgment of Permanent Injunction and Other Equitable Relief ("S.E.C. Judgment"), to which Mr. Twyman consented.[49] The S.E.C. Judgment permanently enjoined Mr. Twyman from future violations of the antifraud and registration provisions of federal securities laws, and directed that a $277,000 disgorgement judgment be entered against Mr. Twyman. In his consent to the S.E.C. Judgment, Mr. Twyman admitted that the $277,000 disgorgement amount represented "the reasonably approximated amount attributable to Twyman by reason of the activities alleged in the [S.E.C.'s] Complaint."[50] However, the S.E.C. waived the entire disgorgement amount and declined to impose a penalty "based on his demonstrated penury."[51] The S.E.C. Judgment also imposed a lifetime bar prohibiting Twyman from serving as an officer or director of any publicly-traded company.[52]

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[44] S-40.
[45] S-39; S-40.
[46] S-2.
[47] Mr. Twyman was married from approximately 1979 until 2014, when his wife passed away. Mr. Twyman remarried in December 2015, after the events at issue in this matter, and his current wife is not a respondent in this proceeding. Tr. at 618 – 619.
[48] Tr. at 618 – 619; S-26.
[49] S-90.
[50] S-90.
[51] S-90.
[52] S-90.

91. Mr. Twyman responded that he prevailed in the shareholder derivative lawsuit stemming from the circumstances underlying the S.E.C. Judgment,[53] but because of the expense of defending the derivative lawsuit, he did not have the funds to defend himself in the S.E.C.'s enforcement action against him. Mr. Twyman testified that, as a result, he stipulated to a judgment that does not admit or deny any allegations contained in the S.E.C.'s Complaint, and does not find that Mr. Twyman committed any securities violations.[54] Mr. Twyman testified that whenever he is involved in a securities transaction, he discloses the S.E.C. Judgment upfront.[55] In addition, Mr. Twyman notes that he maintains a website on which he discloses and addresses the S.E.C. Judgment to the public.[56]

92. Mr. Twyman is not, and never has been, registered with the Commission as a securities sales person or dealer.[57]

Ventures 7000, LLC, an Oklahoma Limited Liability Company

93. V-7000 was an Oklahoma limited liability company from May 16, 2011, until at least August 19, 2016.[58] At some point after that date, V-7000 converted from a limited liability company to a corporation.[59] V-7000 is not, and never has been, registered with the Commission as a securities dealer.[60]

94. Mr. Twyman testified that V-7000 is the administrative and management arm of a joint venture involving the Wycliffe Trust, Advanced Recovery Systems, Inc. ("ARSI"), and Asian Precious Metals, Inc. ("APMI").[61] Mr. Twyman stated that V-7000 is entirely owned by the Wycliffe Trust.[62] He related that the Wycliffe Trust is an Oklahoma complex business trust providing funding for ARSI and APMI, and Mr. Twyman is the Wycliffe Trust's managing trustee.[63] Mr. Twyman testified that he is the Wycliffe Trust's sole owner, and he claims that 90 percent of the beneficial interest flows to nonprofit humanitarian and charitable enterprises, with the other 10 percent flowing to Mr. Twyman

[53] Tr. at 658, 660.
[54] Tr. at 256; Tr. at 661, 663; S-90.
[55] Tr. at 667; Tr. at 809, 829.
[56] Tr. at 679 – 680; Tr. at 1027; V-40.
[57] S-2.
[58] S-21. The website is called "The Twyman Truth.com." V-40.
[59] Tr. at 833 – 834.
[60] S-1(b).
[61] Tr. at 639, 641, 648.
[62] Tr. at 648.
[63] Tr. at 641, 649.

and his family.[64]

95. Mr. Twyman stated that ARSI is a Philippine corporation in good standing, with legal authority to recover treasure in the Philippines. Mr. Twyman notes that ARSI conducts treasure recovery and salvage operations, for which ARSI holds permits from the Philippine government.[65] ARSI is 85 percent owned by the Wycliffe Trust and 15 percent owned by an Australian pension fund.[66]

96. Mr. Twyman testified that APMI is a Philippine corporation in good standing that is licensed by the Philippine government to buy, sell, trade, import, export, store, lease, and transfer precious metals and stones.[67] APMI is 85 percent owned by the Wycliffe Trust and 15 percent owned by an Australian pension fund.[68]

The Joint Venture Funding Agreement

97. Mr. Twyman testified that a mutual friend introduced him to Mr. Moss, and Mr. Moss introduced Mr. Twyman to Mr. Sproat.[69] In March or April of 2012, Mr. Twyman, Mr. Moss, Mr. Sproat, and Mr. McHatton met in Arizona to discuss the possibility of doing a joint venture together.[70] Mr. Twyman testified that that he told Mr. Moss, Mr. McHatton, and Mr. Sproat about his prior securities issues prior to agreeing to any joint venture with TFF, and also related the issues to investor Tim Brunt.[71]

98. On May 10, 2012, TFF entered into a Joint Venture Funding Agreement ("JVFA") with the Wycliffe Trust, V-7000, ARSI, APMI (collectively defined in the JVFA as "Wycliffe"). Mr. Moss, Mr. McHatton, and Mr. Sproat signed the JVFA on behalf of TFF, and Mr. Twyman signed the JVFA as the managing trustee of the Wycliffe Trust.[72]

99. The JVFA provides:

> Wycliffe will undertake three distinct business ventures and/or projects as hereinafter described:

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[64] Tr. at 649, 1009 – 1010.
[65] Tr. at 639 – 640; Tr. at 773; V-2; V-3; V-5; V-7.
[66] Tr. at 648; Tr. at 952.
[67] Tr. at 640; Tr. at 771 – 772; V-1.
[68] Tr. at 648; Tr. at 771 – 772; Tr. at 952.
[69] Tr. at 668 – 671; Tr. at 995 – 996; Tr. at 1075 – 1076.
[70] Tr. at 671 – 672; S-94 at 217 – 218.
[71] Tr. at 668, 671, 675 – 679; Tr. at 878; Tr. at 958; Tr. at 1163 – 1165; V-12; V-36; TFF-00007; S-93 at 129 – 132; S-94 at 223, 227 – 228, 234 – 235, 286.
[72] S-114.

> **Ventures 7000 Treasure Recovery.** Through the auspices of ***Advanced Recovery Systems***, Wycliffe will engage in the recovery of hidden treasures located on both public and private lands and under the seas in the Republic of the Philippines.
>
> **Ventures 7000 Gold Buying and Selling.** Through the auspices of ***Asian Precious Metals***, Wycliffe will engage in the buying and selling of gold….
>
> **Low-Alpha Lead Buying and Selling.** Through the auspices of ***Environmental Reclamation Authority***, Wycliffe will engage in the procurement of finite amount of Low-Alpha Lead that will be sourced from various regions of the world. Wycliffe will then resell the lead to major semi-conductor and electronic component manufacturers.[73]

100. Under the terms of the JVFA, TFF agreed to borrow $15 million from certain qualified investors and use at least 93% of the investment proceeds to fund the projects.[74] The JVFA did not place any responsibility for managing the projects on the investors. The JVFA contains a Non-Circumvention/Non-Disclosure provision preventing a party from disclosing another party's confidential information to a third party without the other party's express written consent.[75] Mr. Twyman notes that, under the terms of the JVFA, Wycliffe did not guarantee success because success depended on full funding, which never happened.[76]

101. Mr. Twyman testified that, originally, TFF had planned to obtain the $15 million outlined in the JVFA from one individual who was an accredited investor who had recently sold his business, but when the individual's wife was diagnosed with cancer, he backed out of the deal.[77] Mr. Twyman testified that after TFF was unable to meet the $15 million obligation to fund the JVFA within 30 days, Mr. Sproat called Mr. Twyman and asked for an extension. Mr. Twyman stated that he was eventually told that TFF could provide at least $200,000 and was working to obtain more.[78] Mr. Twyman testified that because of this occurrence, he provided TFF with a scaled-down "Financing Proposal Summary—Ventures 7000 Philippine Gold Recovery Projects" ("V-7000 Financing Proposal Summary"). Mr. Twyman claims that the V-7000 Financing Proposal Summary was for TFF's eyes only and was not meant to be provided to investors.[79] However, the V-7000 Financing Proposal

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[73] S-114.
[74] S-114.
[75] S-114.
[76] Tr. at 588.
[77] Tr. at 689 – 690, 692 – 695; Tr. at 871 – 872.
[78] Tr. at 695 – 696.
[79] Tr. at 796 – 799, 859, 880, 895 – 897; S-70.

Summary does not state anywhere that is was intended only for TFF.[80]

102. Mr. Twyman observes that the V-7000 Financing Proposal Summary references V-7000 only as a title or dba for the Philippine Gold Recovery ("PGR") Project, which, in turn, was being overseen by Wycliffe, ARSI, and APMI, and that, although V-7000 was in existence at the time of the JVFA, V-7000 was not operational.[81]

OFFER AND SALE OF INVESTMENTS

Tim Brunt's $250,000 Investment in the Philippine Gold Recovery Project

103. Investor Tim Brunt testified at hearing and also participated in an EUO on December 17, 2015.[82]

104. Tim Brunt is an Arizona resident and has a Bachelor of Science degree in construction management, and has worked for the same contracting company for over 27 years.[83] Mr. Brunt testified that he trades stocks, options, futures, currency pairs, and mutual funds for himself,[84] and has taken courses in investing, including courses on options and currency.[85]

105. Mr. Brunt testified that he met Mr. Sproat while roller skating.[86] Mr. Brunt stated that at a Bible study meeting in Phoenix, Arizona, in the spring of 2012, Mr. Sproat introduced Mr. Brunt to Mr. Moss and Mr. McHatton.[87] In approximately April 2012, Mr. Moss, Mr. McHatton, and Mr. Sproat introduced Mr. Brunt to Mr. Twyman.[88] Mr. Twyman told Mr. Brunt about the S.E.C. Judgment and other securities issues during the meeting, as well as by email and via Mr. Twyman's website.[89] Mr. Moss, Mr. McHatton, and Mr. Sproat spoke with Mr. Brunt about investing in the V-7000 PGR Project with the two subsidiaries of the Wycliffe Trust—APMI and ARSI.[90] Mr. Moss subsequently gave the V-7000 Financing Proposal Summary to Mr. Brunt.[91]

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[80] S-70.
[81] Tr. at 880 – 881, 887 – 890; Tr. at 950 – 954; S-70.
[82] S- 69.
[83] Tr. at 748; S-69 at 10.
[84] Tr. at 748; S-69 11, 31.
[85] S-69 at 12, 31.
[86] Tr. at 720.
[87] Tr. at 720.
[88] Tr. at 721 – 722.
[89] Tr. at 699; Tr. at 722 – 723; Tr. at 958; S-69 at 38 – 39; S-94 at 286; V-12; V-40.
[90] Tr. at 724.
[91] S-69 at 21.

106. The V-7000 Financing Proposal Summary stated that V-7000 sought to raise $250,000 to recover sunken and hidden treasure in the form of gold bullion from two sites in the Philippines.[92]

107. As stated in the V-7000 Financing Proposal Summary, the first site is called the "Bay Project:"[93]

> [Ventures 7000] is seeking capital to complete the recovery of 20 metric tons of gold bullion that is residing in less than 300 feet [of water] on the floor of the Philippine Sea....
>
> * * * * * *
>
> Toward the end of World War II, this gold bullion was dropped overboard by the captain of a Japanese warship.... He took this action when he realized that they would be engaged by a US Navy Task Force that had moved into the area to interdict their convoy. Rather than risk losing the war booty in deep waters at sea, he chose to drop the bullion in shallow waters with the intention of returning later to retrieve it. This action proved to be a wise strategy in that the Japanese vessel was, in fact, later sunk in battle.
>
> * * * * * *
>
> Fortunately, before abandoning ship, one of the junior bridge officers was able to save the charts indicating where the treasure had been tossed overboard.... Now, through a special arrangement, the location coordinates are exclusively in the hands of Ventures 7000.
>
> * * * * * *
>
> The recovery operation is expected to take less than six weeks.[94]

108. The second site is called "Bahama Mama:"

> [Ventures 7000] is seeking additional financing to complete final geographical pinpointing and preparations for the recovery of a known and confirmed site containing gold bullion hidden by ex-President Ferdinand Marcos....
>
> * * * * * *
>
> The total potential recovery at this site is believed to be 1,287 metric tons of gold bullion based on inventories provided by the general who had control of the site and its operations till [*sic*] the very end of its use by President Marcos in 1986.[95]

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[92] S-70.

[93] In their Post-Hearing Brief, Mr. Twyman and V-7000 state:

> Mr. Twyman testified at length about the PGR and LAL Projects, and the Division does not dispute the existence of lead in South America or gold in the Philippines. *See* Mar. 1, 2017 Hrg. Tr. Vol. VI at 789:17-790:10-13. Mr. Twyman presented much evidence on the PGR Project, including extensive Philippines law on treasure hunting and recovery. *See* V-1 to V-9; V-20 to V-25; V-28 to V-29; Mar. 1, 2017 Hrg. Tr. Vol. VI at 833:3-23; Mar 2, 2017 Hrg. Tr. Vol. VII at 910:23-911:8; May 1, 2017 Hrg. Tr. Vol. XI at 999:9-1006:2. Heath Cardie also testified to the PGR Project that he personally witnessed on two trips to the Philippines, did a due diligence report on, and ultimately invested in. *See* Mar. 1, 2017 Hrg. Tr. Vol. VI at 804-831; V-9. Finally, the Division's own witness, Adolph de Roos, testified that "the story of gold being in the Philippines is very plausible." *See* Feb. 28, 2017 Hrg. Tr. Vol. V at 588:12-14.

[94] S-70.

[95] S-70.

109. The V-7000 Financing Proposal Summary claimed that both locations had been located and the treasure confirmed, and V-7000 was ready to begin the recovery phase. It indicated that an additional $250,000 in capital was needed to complete the funding of the Bay Project and pinpoint the gold bullion at Bahama Mama. "The total amount of time necessary to complete this recovery and generate proceeds therefrom will be less than 120 days from the time that full funding is in place."[96]

110. The projections contained in the V-7000 Financing Proposal Summary stated that an individual who provided the entire $250,000 would receive "an estimated return of 9.5 to 1 within 6 to 9 months of total funding and a combined estimated return from both the Bay Project and the Bahama Mama Project of 45 to 1 over an 18 to 24-month period."[97]

111. The V-7000 Financing Proposal Summary ends by asserting:

> While it remains buried, this gold bullion is accomplishing no good purpose. Once recovered, it will be used to improve the lives of millions of people, both in the Philippines and elsewhere. In addition to the monies that will flow into government coffers and those donations made by Venture 7000's financial partners, 70% of Venture 7000's net recovery proceeds will go to fund humanitarian and philanthropic endeavors throughout the world.[98]

112. Mr. Brunt ultimately agreed to invest the full $250,000 that V-7000 was seeking. He testified that the timing projections and the size of the projected returns enticed him to invest in the PGR Project.[99] Mr. Brunt also testified that he invested because he believed that TFF and V-7000 were Christian organizations that had indicated that the profits would be used for charitable works throughout the world.[100]

113. Mr. Moss testified that he did not disclose to Mr. Brunt the 2008 California Order against Mr. Moss before Mr. Brunt invested in the PGR Project.[101]

114. On June 20, 2012, Mr. Brunt received a $250,000 Promissory Note from TFF that was signed by Mr. Moss, Mr. McHatton, and Mr. Sproat as TFF's trustees. The Promissory Note had a term of nine months, plus an extension for three months at the sole option of TFF.[102]

115. Mr. Brunt also signed a Memorandum of Understanding ("MOU"), which was executed

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[96] S-70.
[97] S-70.
[98] S-70.
[99] S-69 at 34; Tr. at 739.
[100] S-69 at 34 – 35.
[101] Tr. at 1184.
[102] S-105.

by Mr. Moss, Mr. McHatton, and Mr. Sproat, as TFF directors.[103] The MOU referenced the JVFA with Wycliffe Trust and V-7000, and indicated that TFF would use 85% of Mr. Brunt's $250,000 investment "to fund the various business ventures and investment opportunities being undertaken pursuant to the [JVFA].... The balance of said loan proceeds will be retained by TFF as operating funds and fees permitting TFF to properly monitor and manage said business ventures and investment opportunities."[104]

116. On June 21, 2012, Mr. Brunt wired $250,000 to a JP Morgan Chase Bank account ending in Xx4993 held in the name of Quicksilver Realty ("QSR").[105] The account lists QSR as a dba of Mr. McHatton, who is the holder of Chase account Xx4993.[106] Mr. Moss testified that in 2012 and 2013, TFF used Mr. McHatton's QSR bank account to handle investors' money since TFF did not have an account set up in its own name.[107] At the time Mr. Brunt wired his funds, the QSR bank account had a balance of only $419.50.[108]

117. Some hours after the $250,000 wire on June 21, 2012, Mr. McHatton wired $225,000 to one of Mr. Twyman's bank accounts in Tulsa, Oklahoma, referencing the beneficiary as "Vern Twyman ref: Venture 7000."[109] Mr. Twyman testified that this was an error and he later transferred the funds from TFF into Wycliffe Trust's bank account to correct the error.[110]

118. The Division notes that because the beginning balance in the QSR bank account was $419.50 at the time of Mr. Brunt's $250,000 wire, at least $224,580.50 of the $225,000 wire to Mr. Twyman were Mr. Brunt's investment funds.

119. The Division also notes that Mr. Moss testified that neither he nor his company, TMC Consultants, received any compensation in connection with Mr. Brunt's $250,000 investment.[111] However, on June 21, 2012, Mr. Moss deposited a check for $7,500 that Mr. McHatton wrote on the

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[103] S-105.
[104] S-105.
[105] S-45. The Division notes that Quicksilver Realty is not an entity that is registered with the Commission to do any business in Arizona.
[106] S-42.
[107] Tr. at 1272 – 1273; 1299.
[108] S-160.
[109] S-45.
[110] S-45; S-96; Tr. at 514; Tr. at 701 – 702; Tr. at 898.
[111] Tr. at 1186.

QSR bank account made payable to TMC Consultants, Inc.[112] On the memorandum line is written "For Ventures 7000 Tim Brunt."[113]

120. The Division notes that despite the fact that TFF and V-7000 claimed that the PGR Project was "poised for completion"[114] upon receipt of a $250,000 investment, and that the "total amount of time necessary to complete [the Bay Project] recovery and generate proceeds therefrom will be less than 120 days from the time that full funding is in place,"[115] TFF has not returned Mr. Brunt's $250,000 investment. However, Mr. Brunt subsequently received $2,000 in interest on his investment with TFF in the PGR Project.[116]

Tim Brunt's $18,750 Investment in the Christian Angel Capital Network

121. During his EUO on August 18, 2016, Mr. Moss testified that he was on the board of directors of the Christian Angel Capital Network ("CACN") and was the vice president of sales and business development.[117] Mr. Moss stated that CACN was an online matching group that he formed along with his partner in Las Vegas, Nevada, Bill Murray, for the purpose of creating connections between opportunities and private or accredited angel investors.[118] Mr. Moss believes that CACN was active between 2011 and 2013.[119] Mr. Moss stated that he and Mr. Murray had set up a website "and we were getting to the point where we were looking at what's called a social franchise, which is chapters. [Mr. Brunt] purchased a license for a chapter here in Phoenix on behalf of [TFF]."[120] Mr. Moss asserts that Mr. Brunt's money was not for a stock purchase. "It was the rights to a license and revenue share that would come out of Phoenix."[121]

122. At hearing, Mr. Brunt testified that he was offered stock in the CACN through TFF, stating that he invested "probably around 520 - - 20-some thousand dollars."[122] In his December 17, 2015, EUO, Mr. Brunt stated that the amount was $18,750 for his purchase of stock, and asserted that

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[112] S-141; S-145.
[113] S-141; Tr. at 1186.
[114] S-70.
[115] S-70.
[116] Tr. at 749; S-99.
[117] S-93 at 90, 92.
[118] S-93 at 91 – 93; Tr. at 731.
[119] S-93 at 92.
[120] S-93 at 92.
[121] S-93 at 92.
[122] Tr. at 739 – 740.

he had found out about CACN through TFF.[123] However, Mr. Brunt also testified at the EUO that CACN was not part of TFF.[124] Mr. Brunt claimed that he had received a stock certificate when he invested in CACN.[125] However, a stock certificate was not introduced as evidence in this proceeding.

123. At hearing, Mr. Brunt testified regarding his understanding of how the funds he provided to CACN were used:

> My understanding was that was one-half of the Phoenix location for that $18,750. I provided the money and was doing it for—on behalf of [TFF]. I was—that was never meant for me. When funds were to come around, I was going to give that—not give it, but [Mr. Moss was] going to pay me back for the money I had put in to buy or purchase that for TFF.
>
> They wanted that [CACN] office location in Phoenix because that's where you're located. So I provided the money—well, half of it to purchase that right.[126]

124. Mr. Brunt testified that he recalls speaking with Mr. Moss' partner at CACN, Bill Murray, and stated that he had worked directly with Mr. Murray to obtain the chapter license.[127]

125. On June 25, 2012, Mr. Brunt wired $18,750 to the CACN bank account ending Xx9710, on which Mr. Moss was an authorized signatory.[128] The Division notes that before Mr. Brunt's wire, that account had a balance of $593.73.[129]

126. Mr. Moss testified at his EUO on August 23, 2016, that neither he nor any of his companies received any compensation from Mr. Brunt's investment in CACN.[130] In his EUO on August 16, 2016, Mr. Moss testified that he did not have an income as a vice president of CACN, but was paid for expenses he incurred.[131]

127. On June 26, 2012, $7,500 was transferred from CACN's account to the bank account ending Xx9710 belonging to Mr. Moss' company, TMC Consultants.[132] The Division notes that before the $7,500 wire transfer from the CACN account, the TMC Consultants' account had a balance of

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[123] S-69 at 15 – 16.
[124] S-69 at 58.
[125] S-69 at 58.
[126] Tr. at 730 – 731.
[127] Tr. at 731.
[128] S-138; Tr. at 1191.
[129] S-63.
[130] S-94 at 292.
[131] S-93 at 93.
[132] S-63; S-145; Tr. at 1191 – 1192.

$272.89.[133] Shortly after the $7,500 transfer, Mr. Moss withdrew $4,000 in cash, and also transferred $1,500 to his daughter's bank account.[134]

Tim Brunt's $118,000 Investment in a Brazilian Bond

128. Mr. Moss testified that in the summer of 2012, Mr. Sproat introduced Mr. Moss to individuals in Texas who ultimately introduced Mr. Moss and Mr. Sproat to a woman who they believed worked for the United Nations, named Magdella Chotoosingh, who also owned a brokerage company called Omega Global Investments, Inc. in the Bahamas[135] Mr. Moss claimed that Ms. Chotoosingh brought to Mr. Moss and Mr. Sproat's attention an investment opportunity regarding a Brazilian bond that came directly through the United Nations.[136] Ultimately, TFF and Omega Global Investments, Inc. entered into a joint venture partnership regarding the sale of the Brazilian bonds.[137] A letter from Omega Global Investments, Inc. to TFF dated July 4, 2012, stated that the purpose of the joint venture was for:

> the sale of cession of rights of one (1) Brazilian LTN "H" series bond (the "Bond") owned by [Omega Global Investments, Inc.'s] client. The purpose of the participation funds will be to register the Bond on Euroclear facility in order to facilitate the eventual sale of cession right of said Bond to a qualified buyer. Specifically, the fund will be used to (i) register the bond on Euroclear screen; and (ii) facilitate sale of same to a pre-identified ready, willing, and able, *bonafide* [*sic*] buyer ("Buyer"). Compensation to The Fortitude Foundation for its participation in the sale of the LTN will be One Hundred Million United States Dollars (US$100,000,000).

129. TFF provided a copy of the letter from Omega Global Investments, Inc. to Mr. Brunt.[138] On July 6, 2012, Mr. Brunt wired $111,800 to the QSR bank account controlled by Mr. McHatton in exchange for a promissory note issued by TFF that was signed by Mr. Moss and Mr. McHatton as TFF's directors.[139] Under the terms of the promissory note, TFF would use the funds to participate in a joint venture with a company in the Bahamas to "Buy/Sell…Cession of rights of one (1) Brazilian LTN 'H' series bond #308.656."[140] In return, TFF would repay Mr. Brunt's principal plus a one

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[133] S-145; Tr. at 1204 – 1205.
[134] S-145; Tr. at 1207 – 1208.
[135] Tr. at 1087.
[136] Tr. at 1087.
[137] Tr. at 1087.
[138] S-69 at 27.
[139] S-45; S-70.
[140] S-45; S-70.

hundred percent profit within one month, coming from the sale of the Brazilian Bond.[141]

130. On July 10, 2012, Mr. McHatton wired $110,000 from his QSR bank account to "IQ Escrow/Dynasty,"[142] for TFF's purchase of the Brazilian bond.[143]

131. Mr. Moss testified that, due to circumstances out of TFF's control, the Brazilian bond did not sell.[144]

132. TFF has not returned any of Mr. Brunt's $111,800 used for the purchase of the Brazilian bond.[145]

133. Mr. Moss did not disclose the 2008 California Cease and Desist Order against him to Mr. Brunt before Mr. Brunt paid the $111,800 to TFF.

Quicksilver Realty's $18,000 Promissory Note to Tim Brunt

134. On August 27, 2012, Mr. Brunt wired $18,000 to the QSR bank account controlled by Mr. McHatton in exchange for a promissory note issued by "Quicksilver Realty, a business services company," signed by Mr. McHatton as its Managing Director and Mr. Moss as its representative.[146] Under the terms of the promissory note, QSR would repay Mr. Brunt's $18,000, plus one percent interest within 12 months.[147] Although the promissory note was executed by QSR, Mr. Brunt believed he was investing with TFF.[148]

135. Mr. Moss did not disclose the 2008 California Cease and Desist Order to Mr. Brunt before his purchase of the Promissory Note.[149]

136. The Division notes that QSR is not registered with the Commission to do business in Arizona, stating that Mr. McHatton uses the name as a dba.[150]

137. Mr. Brunt testified that the funds he provided to TFF were for investments and not for loans, and expected the investments to generate returns. Mr. Brunt also noted that he was not expected

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[141] S-45
[142] S-45.
[143] Tr. at 1087 – 1088, 1090.
[144] Tr. a1095.
[145] Tr. at 1180.
[146] S-45; S-105(c).
[147] S-105(c).
[148] S-69.
[149] Tr. at 1185.
[150] S-41; S-42.

to do anything in connection with his investments through TFF in order to earn a return.[151]

Respondents' Sale of the Low-Alpha Lead Project

138. Between October 30, 2012, and May 20, 2013, Mr. Moss, Mr. McHatton, Mr. Sproat, and TFF offered and sold promissory notes and investment contracts within or from Arizona to Mr. Brunt and at least seven other investors in connection with TFF's plan to acquire and then sell low-alpha lead ("LAL Project").[152] TFF and Mr. Moss provided investors with an "Executive Summary – Environmental Reclamation Authority, Ltd" ("ERA Executive Summary)[153] representing that:

- TFF was in a joint venture with the Wycliffe Trust to "acquire low-alpha and ultra-low alpha lead – a very valuable metal used in the manufacturing of semi-conductors – and then resale [*sic*] that lead to companies engaged in the production of semi-conductors and related components."[154]
- "Pricing: Projected base purchase price of product is estimated at less than $10.00/lb and projected sales price is between $1,1000.00/lb and $4,400.00/lb depending on the alpha level (reading/signature) of the lead."[155]
- The project required $1,500,000 of capital from investors.[156]
- "Return of Capital: Lenders will receive a portion of the net revenues up to an agreed maximum payout of five times (5x) the initial loan, plus return of principal."[157]
- "The element of risk for this venture is relatively small…."[158]
- "This is a very unique investment opportunity…. [T]he quality of the product is virtually guaranteed. In addition, the purchase price of the product is low enough to virtually guarantee a significant profit at even the most modest resale prices. The bottom line is that although the upside potential of this investment is extremely high, the downside risk is less than many traditional funding platforms."[159]

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[151] Tr. at 740.
[152] S-106(a) and (b); S-107(a) and (e); S-108(a) and (b); S-109(a) and (b); S-110(a) and (b); S-111(a)and (b); S-111(a) and (b); and S-112(a) and (b).
[153] S-55; S-94, Exhibit 23.
[154] S-55: S-94, Exhibit 23.
[155] S-55; S-94, Exhibit 23.
[156] S-55; S-94, Exhibit 23.
[157] S-55; S-94, Exhibit 23.
[158] S-55; S-94, Exhibit 23.
[159] S-55; S-94, Exhibit 23.

139. The Division asserts that TFF and Mr. Moss sold promissory notes and/or investment contracts within or from Arizona on or about the following dates and in the following amounts in connection with TFF's plan to acquire and sell low-alpha lead through a joint venture with Wycliffe:

INVESTOR	DATE	AMOUNT
Tim Brunt	10/30/2012	$125,000[160]
Dr. Matthew Mannino	10/31/2012	$75,000[161]
Lowell E. Olmstead	11/14/2012	$100,000[162]
James Clark/Clark Halley, LLC	11/20/2012	$50,000[163]
John Bruner, Ph.D.	12/4/2012	$100,000.[164]
Thomas Spencer	12/19/2012	$50,000[165]
Peter Bentz/Bentz Joint Revocable Trust	1/9/2013	$50,000[166]
Marques Flores	4/25/2013	$13,000[167]
Marques Flores	5/20/2013	$26,000[168]
Marques Flores	5/23/2013	$5,000[169]

140. TFF issued a Promissory Note and an MOU for each investment. Most of the Promissory Notes had a term of 90 days, plus a 90-day extension at TFF's sole option. TFF's Promissory Notes to Mr. Flores had a 180-day term, plus a 180-day extension at TFF's sole option. Under the terms of the Promissory Notes, TFF planned to invest 85 percent or more of the proceeds into one or more business ventures, and the investors would be entitled to participate in the profits generated by TFF's use of investors' money. Further, the MOUs provided that, in addition to their original principal, the investors would receive "a bonus equal to 500% of the original principal amount…."[170] The MOUs also provided that TFF's repayment of the Promissory Notes would be based on "the profits that will come from the business ventures between TFF and Wycliffe."[171] In addition, the MOUs stated that TFF is "responsible for arranging and facilitating said transactions and will also be providing ongoing oversight for the business ventures…."[172] In addition, MOUs stated that TFF was

[160] S-45; S-99.
[161] S-45; S-106(a) and (b); S-99.
[162] S-45; S-107(a) and (e); S-99.
[163] S-45; S-108(a) and (b); S-99.
[164] S-45; S-109(a) and (b); S-99.
[165] S-45; S-110(a) and (b); S-99.
[166] S-45; S-111(a) and (b); S-99.
[167] S-51; S-99.
[168] S-52; S-112(a) and (b); S-99.
[169] S-112(a) and (b); S-99.
[170] S-106(b); S-107(e); S-108(b); S-109(b); S-110(b); S-111(b); S-112(b).
[171] S-106(b); S-107(e); S-108(b); S-109(b); S-110(b); S-111(b); S-112(b).
[172] S-106(b); S-107(e); S-108(b); S-109(b); S-110(b); S-111(b); S-112(b).

engaged in a joint venture between TFF and Wycliffe.[173]

141. The Division states that "TFF and Moss sold the low-alpha lead investments, in part, by promoting Moss as a business executive who exemplifies Christian values, without disclosing the 2008 California Desist and Refrain Order that found Moss committed securities fraud."[174] TFF and Mr. Moss also did not disclose the S.E.C. Judgment against Mr. Twyman to at least Dr. Mannino, Mr. Olmstead, Dr. Bruner, and Mr. Spencer before selling them the low-alpha lead investments.[175]

Tim Brunt

142. On October 30, 2012, Mr. Brunt wired $125,000 to the QSR bank account to invest in the LAL Project through TFF.[176] Mr. Brunt testified that he considered the money he provided for the LAL Project to be an investment; not a loan.[177]

Matthew Mannino

143. Investor Dr. Matthew J. Mannino did not testify at the hearing. Division investigator Toni Brown testified that Dr. Mannino is a chiropractor in Arizona.[178] Division investigator William Santee testified that he interviewed Dr. Mannino at Dr. Mannino's office about his investment with TFF.[179] Mr. Santee stated that Dr. Mannino related that he had known Mr. McHatton for a few years before Mr. McHatton introduced him to Mr. Moss.[180] According to Mr. Santee, Dr. Mannino said that after speaking with Mr. Moss and Mr. McHatton about investing in the LAL Project, he agreed to invest through TFF because he trusted Mr. McHatton, who was one of Dr. Mannino's patients.[181]

144. On October 31, 2012, Dr. Mannino wired $75,000 to the QSR bank account for his investment in the LAL Project. In return, TFF provided a $75,000 Promissory Note from TFF signed by Mr. Moss, Mr. McHatton, and Mr. Sproat, and an MOU signed by Dr. Mannino and Mr. Moss, Mr. McHatton, and Mr. Sproat on behalf of TFF.[182]

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[173] S-106(b); S-107(e); S-108(b); S-109(b); S-110(b); S-111(b); S-112(b).
[174] Division's Opening Post-Hearing Brief, pages 26 – 27.
[175] Tr. at 1185; Tr. at 136; Tr. at 90; Tr. at 325.
[176] S-45; S-99; S-101(d); Tr. at 724.
[177] Tr. at 740.
[178] Tr. at 211.
[179] Tr. at 458.
[180] Tr. at 458; Tr. at 1097 – 1098; Tr. at 1300 – 1301; S-94 at 287.
[181] Tr. at 458 – 459; Tr. at 1300 – 1301.
[182] Tr. at 458 – 458; S-99; S-101(d); S-106.

145. Dr. Mannino eventually received $1,687.50 for 90 days' worth of interest payments on his investment with TFF.[183]

146. Before Mr. Brunt and Dr. Mannino wired their respective investments of $125,000 and $75,000 to the QSR bank account on October 30 and 31, 2012, the QSR bank account balance was $403.[184]

147. On November 2, 2012, Mr. McHatton wired $170,000 to a bank account in Oklahoma, referencing the beneficiary as "Wycliffe Trust Ref: Vernon R. Twyman, Jr., Trustee."[185] Of the $170,000 transfer, at least $169,597 consisted of Mr. Brunt's and Dr. Mannino's investments.

Lowell Olmstead

148. Investor Lowell Olmstead, Jr. lives in Florida and has been a businessman for over 30 years, building primarily luxury homes, assisted living communities, and investing in distressed real estate.[186] Mr. Olmstead testified that he was introduced to TFF by a friend.[187] Mr. Olmstead stated that he received investment documentation from Mr. Moss related to the LAL Project, including an "ERA Executive Summary" that states "TFF has an exclusive opportunity with Wycliffe Trust & the ERA – JV" and another document entitled "Dr. Lee's Opinion" (relating to low-alpha lead). Mr. Olmstead testified that he decided to invest with TFF because he believed Mr. Moss to be genuine, sincere, honest and trustworthy, and because he truly believed all that Mr. Moss said.[188]

149. Mr. Twyman notes that he did not prepare either the ERA Executive Summary or the document entitled Dr. Lee's Opinion, and observes that neither document references V-7000 or Mr. Twyman.[189]

150. On November 14, 2012, Mr. Olmstead wired $100,000 to the QSR bank account as his investment in the LAL Project. In return, Mr. Olmstead received a Promissory note from TFF signed by Mr. Moss, Mr. McHatton, and Mr. Sproat, and an MOU signed by Mr. Olmstead and Mr. Moss, Mr.

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[183] Tr. at 460; S-99.
[184] S-101(d).
[185] S-45; S-101(d).
[186] Tr. 106 – 107.
[187] Tr. at 107; S-94 at 292 – 294.
[188] Tr. at 112.
[189] Tr. at 890 – 891; S-55.

McHatton, and Mr. Sproat on behalf of TFF.[190]

151. Before Mr. Olmstead wired his $100,000 to the QSR bank account, the account balance was $5,809.[191] Mr. Olmstead wired his investment funds to Mr. McHatton's QSR bank account on November 14, 2012, and on November 16, 2012, Mr. McHatton wired $85,000 to an account in Oklahoma referencing the beneficiary as "Wycliffe Trust Ref: Vernon R. Twyman, Jr., Trustee."[192]

152. Mr. Olmstead testified that approximately one week after making his investment with TFF, he learned through a friend some negative information about Mr. Twyman, and Mr. Olmstead asked for his money back. Mr. Olmstead explained that while speaking with Mr. Moss, Mr. McHatton, Mr. Sproat and Mr. Twyman, they offered to return his money, but Mr. Olmstead testified that they convinced him to leave his money in.[193]

James Clark

153. Investor James Clark did not testify at the hearing. According to a biographical document provided by Mr. McHatton, Mr. Clark has a Bachelor of Science Degree in accounting and finance, and has worked for KPMG in California. Mr. Clark co-founded Republic Monetary Exchange ("RME"), a Phoenix-based precious metals dealer that became "a nationally recognized, $100 million a year organization."[194]

154. According to Mr. Santee, who interviewed Mr. Clark, Mr. Clark related that he was introduced to Mr. Moss by Alex Haley who worked with Mr. Clark at RME.[195] On November 20, 2012, Mr. Clark wired $50,000 to the QSR bank account as his investment in the LAL Project. In return, Mr. Clark received a Promissory Note from TFF signed by Mr. Moss, Mr. McHatton, and Mr. Sproat, and an MOU signed by Mr. Clark on behalf of his company, Clark Haley LLC, and Mr. Moss, Mr. McHatton, and Mr. Sproat on behalf of TFF.[196]

155. On November 19, 2012, the QSR bank account had a balance of $2,014.[197] Mr. Clark

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[190] Tr. at 110 – 112, 141; S-55; S-56; S-99; S-101(e); S-107(e).
[191] S-101(e).
[192] S-45; S-101(e).
[193] Tr. at 139 – 140, 151; Tr. at 840 – 842; Tr. at 1164; TFF-00007; S-93 at 153 – 154; S-94 at 240.
[194] JTF005.
[195] Tr. at 452; S-94 at 306 – 307.
[196] Tr. at 452; S-99; S-108.
[197] S-101(f).

wired his $50,000 investment to the QSR bank account on November 20, 2012.[198]

156. Mr. Santee testified that Mr. Clark stated that he was not an accredited investor, and that neither Mr. Moss nor anyone else asked him about his net worth or annual income.[199]

John Bruner

157. Investor John Bruner lives in Arizona and has a Bachelor of Science in animal science, a Master of Science in agricultural economics, a Master of Business Administration, and a Doctor of Business Administration.[200] Dr. Bruner stated that he was a professor of finance and business economics at the University of Southern California for 21 years.[201] Dr. Bruner testified that, like Mr. Clark, he was introduced to Mr. Moss by Alex Haley and learned about TFF and the LAL Project from Mr. Moss during a meeting at a restaurant.[202] Dr. Bruner testified that he decided to invest with TFF through Mr. Moss, who Dr. Bruner felt made the LAL Project sound feasible.[203] Dr. Bruner stated that if he had known of the prior securities orders against Mr. Twyman and Mr. Moss, he would not have invested in the LAL Project.[204]

158. On December 2, 2012, Dr. Bruner wired his $100,000 investment into the QSR bank account as his investment in the LAL Project.[205] In return, Dr. Bruner received a Promissory Note from TFF signed by Mr. Moss, Mr. McHatton, and Mr. Sproat, and an MOU signed by Dr. Bruner, and Mr. Moss, Mr. McHatton, and Mr. Sproat on behalf of TFF. Mr. Bruner, testified that he considered the money he provided for the LAL Project to be an investment, not a loan.[206] In March or April of 2013, Dr. Bruner received an interest payment of $888.33 on his investment.[207]

Thomas Spencer

159. Investor Thomas Spencer was an executive business owner with a background in building and development and business consulting. Mr. Spencer was Vice President for Days Inn,

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[198] S-45; S-101(f).
[199] Tr. at 453.
[200] Tr. at 44 – 45.
[201] Tr. at 45.
[202] Tr. at 48.
[203] Tr. at 49, 55.
[204] Tr. at 90.
[205] S-45; S-101(f).
[206] Tr. at 90.
[207] Tr. at 70, 79; S-99.

building units along the east coast of the United States. Mr. Spencer owned and developed an oil business in Texas, which was subsequently sold to a public entity.[208]

160. Mr. Spencer testified that, like Mr. Clark and Dr. Bruner, he was introduced to Mr. Moss and TFF through Alex Haley.[209] Mr. Spencer testified that he ultimately received the investment documentation for the LAL Project from Mr. Haley.[210] Mr. Spencer stated that he decided to invest in the LAL Project because of the relationship with Wycliffe, which Mr. Spencer mistakenly assumed was affiliated with Wycliffe Bible Translators; no one told Mr. Spencer about this incorrect assumption.[211]

161. On December 19, 2012, Mr. Spencer wired his $50,000 investment in the LAL Project into the QSR bank account.[212] In return, Mr. Spencer received a Promissory Note from TFF signed by Mr. Moss, Mr. McHatton, and Mr. Sproat, and an MOU signed by Mr. Spencer, and Mr. Moss, Mr. McHatton, and Mr. Sproat on behalf of TFF. Mr. Spencer testified that he considered the money he provided for the LAL Project to be an investment, not a loan.[213] In May 2013, Mr. Spencer received two interest payments of $375, for a total of $750, on his investment.[214]

162. On December 21, 2012, Mr. McHatton wired $170,000 to an account in Oklahoma referencing the beneficiary as "Wycliffe Trust Ref: Vernon R. Twyman, Jr., Trustee."[215] Not all of the money can be traced to investor funds as the QSR bank account had a beginning balance of $2,014 and $100,000 in other funds from an unknown entity called Kingdom Builders Group.[216]

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[208] Tr. at 306 – 307; JTF008.
[209] Tr. at 307 – 308; S-94 at 306 – 307.
[210] Tr. at 309.
[211] Tr. at 308 – 310, 330 – 331.
[212] S-45; S-101(f).
[213] Tr. at 317.
[214] S-44; S-99.
[215] S-45; S-101(f).
[216] S-45; Tr. at 522 – 524.

163. In total, between June 21, 2012, and December 21, 2012, Mr. McHatton wired $650,000 from the QSR bank account ending Xx4993 to Mr. Twyman's accounts in Oklahoma for V-7000 and the Wycliffe Trust for the PGR and LAL Projects as follows:[217]

Investor	Investment Date	Amount Wired to QSR Acct. No. Xx4993	Date Wired to Mr. Twyman	Amount Wired to Mr. Twyman
Mr. Brunt	6/21/2012	$250,000 (PGR)	6/21/2012	$225,000
Mr. Brunt	10/30/2012	$125,000 (LAL)		
Dr. Mannino	10/31/2012	$75,000 (LAL)	11/02/2012	$170,000
Mr. Olmstead	11/14/2012	$100,000 (LAL)	11/16/2012	$85,000
Mr. Clark	11/20/2012	$50,000 (LAL)		
Dr. Bruner	12/04/2012	$100,000 (LAL)		
Mr. Spencer	12/19/2012	$50,000 (LAL)	12/21/2012	$170,000
TOTAL		**$750,000**		**$650,000**

164. Evidence produced by the Division reflects that V-7000 and Mr. Twyman received no other funds from TFF after December 21, 2012.[218]

Peter Bentz

165. Investor Peter Bentz did not testify at the hearing, but testified at an EUO on February 19, 2016.[219] Mr. Bentz lives in Arizona and has a Bachelor of Science in chemistry and mathematics. Mr. Bentz owned a screen-printing business for over 25 years, and was a partner and investor in a business developing hotels.[220] Mr. Bentz stated that he has known Mr. Moss for over 15 years and learned about TFF investment opportunities through Mr. Moss, who provided him with the investment

[217] S-45.
[218] S-99.
[219] S-84.
[220] S-84 at 9, 11.

documentation regarding the LAL Project.[221] In his EUO, Mr. Bentz testified that he decided to invest with TFF based on his relationship with Mr. Moss and the recommendation of another friend.[222]

166. On January 8, 2013, Mr. Bentz wired his $50,000 investment in the LAL Project into the QSR bank account on behalf of The Bentz Joint Revocable Trust.[223] In return, Mr. Bentz received a Promissory Note from TFF signed by Mr. Moss, Mr. McHatton, and Mr. Sproat, and an MOU between The Bentz Joint Revocable Trust, and Mr. Moss, Mr. McHatton, and Mr. Sproat on behalf of TFF.[224] Mr. Twyman and Mr. Moss testified that Mr. Bentz's money did not go to V-7000 or Mr. Twyman.[225]

Marques Flores

167. Investor Marques Flores did not testify at the hearing. Division investigator William Santee testified that he interviewed Marques Flores regarding his investment with TFF.[226] Mr. Flores related to Mr. Santee that Mr. Krause had brought the LAL Project to Mr. Flores' attention when Mr. Krause was soliciting Mr. Flores to buy solar panels for Mr. Flores' business.[227] Mr. Krause stated that the LAL Project was a good deal and that Mr. Krause, himself, had invested $25,000 in the Project.[228] Mr. Flores related that Mr. Krause encouraged Mr. Flores' to meet with Mr. Moss to discuss the LAL Project.[229] Subsequently, Mr. Moss, Mr. McHatton and Mr. Sproat met with Mr. Flores, at which time, they told Mr. Flores that he would receive back five times the amount of his investment within 90 days.[230]

168. Mr. Flores invested $13,000 on April 25, 2013,[231] another $26,000 on May 20, 2013, both by check, and $5,000 cash on May 23, 2013.[232] Mr. McHatton deposited Mr. Flores' checks to his QSR bank account ending Xx4993.[233] In return, Mr. Flores received a Promissory Note from TFF

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[221] S-84 at 13, 20, 22, 25.
[222] S-84 at 13, 15, 19.
[223] S-45; S-101(f).
[224] S-111(a).
[225] Tr. at 704 – 705; Tr. at 1166; S-99.
[226] Tr. at 466.
[227] Tr. at 467.
[228] There is no evidence in the record that Mr. Krause invested any of his own money in the LAL Project.
[229] Tr. at 467 – 468.
[230] Tr. at 468.
[231] S-51.
[232] S-52; S-112(a); S-112(b).
[233] S-50; S-53.

signed by Mr. Moss, Mr. McHatton, and Mr. Sproat, and an MOU signed by Mr. Flores, and Mr. Moss, Mr. McHatton, and Mr. Sproat on behalf of TFF.

169. Mr. Twyman and Mr. Moss testified that Mr. Flores' money for the investment in the LAL Project did not go to V-7000 or Mr. Twyman.[234]

170. On May 22, 2012, Mr. McHatton withdrew $5,000 cash from the QSR bank account and gave the money to Mr. Moss, who then deposited the money into his TMC Consultant's bank account.[235] On May 23, 2013, Mr. McHatton wrote a check for $1,000 on the QSR bank account made payable to Mr. Krause with a reference line notation of "for Flores."[236]

Conversion of the LAL Project Promissory Notes

171. Division witness, Adolph de Roos, lives in Arizona and has a Ph.D. focused on sonar systems, and currently runs a company focused on technology transfer.[237] Dr. de Roos first met Mr. Sproat when he introduced himself to Dr. Roos at a Costco.[238] Mr. Sproat introduced Dr. de Roos to Mr. Moss and McHatton and eventually to Mr. Twyman.[239]

172. Mr. Moss, Mr. Sproat, Mr. McHatton and Mr. Twyman spoke with Dr. de Ross about the LAL Project in mid-2012 and convinced him to go to Guatemala to review the low-alpha lead situation. Dr. de Roos testified that he met with about a half dozen people in Guatemala City, including Mr. Twyman and a metallurgist from Tucson. Mr. Moss, Mr. McHatton, and Mr. Sproat were not in Guatemala for the meeting.[240]

173. Dr. de Roos related that the group went to Antigua City, where the low-alpha lead was supposedly located. Dr. de Roos testified that after four days in Guatemala, the group did not find any low-alpha lead.[241]

174. Mr. Twyman testified that:

> V-7000 is "not actively pursuing the low alpha lead [in Guatemala] at this time. It's one of those things that if the – we might be encountering low alpha lead in our sea recoveries

[234] Tr. at 705; Tr. at 790; Tr. at 1162.
[235] S-144; Tr. at 1242.
[236] S-38.
[237] Tr. 570 – 571.
[238] Tr. at 573.
[239] Tr. at 573.
[240] Tr. at 577 – 578.
[241] Tr. at 577.

> in the Philippines or elsewhere, because once the lead has been in the ocean bottom a hundred years or more it basically becomes low alpha. So it was used as a balance also in ships. So it's very possible we will encounter some of that. But we are not currently actively pursuing it at this time Our focus at this time is solely on the gold recovery.[242]

175. The evidence reflects that once V-7000 shifted its focus from the LAL Project only to the PGR Project, TFF and Mr. Moss began soliciting the LAL Project investors to convert their Promissory Notes into revenue sharing agreements in the PGR Project with V-7000. [243] Mr. Moss emailed investors on April 26, 2013, regarding the proposal. In his email, Mr. Moss stated that TFF does not "explore, mine or dig – we simply recover real product & hard assets," even though TFF had failed to recover any low-alpha lead.[244] The communique continued:

> The Fortitude Foundation…desires to bring like-minded Kingdom partners in to participate w/us under a Revenue Sharing arrangement in our Gold Recovery Project that may provide exponential returns…. Under this plan we have in place the mechanism to recover vast quantities of high quality bullion, and other collectible and precious stones, which may yield rapid and mid-term high yields.
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> * * * * * *
>
> V-7000 has authorized the issuance of existing Revenue Share Units to TFF to participate in the net revenues generated from recovery activities. Each Unit will receive a pre-defined portion of the net revenues and/or net profits generated from V-7000's business activities….[245]

176. An attachment to the April 26, 2013, email stated that investors would receive "an estimated return of 19.8 to 1 within 12 months of total funding and a combined estimated return from both the Bay Project and the Bahama Mama Project 51.8 to 1 over an 18 to 36 month period."[246]

177. The Division observes that:

> Another attachment to the email asserted TFF's and V-7000's "intense commitment to a Biblically based code of ethics," and their "foundational principles of honesty, integrity, productivity, stewardship, transparency and fairness," without disclosing the 2008 California Desist and Refrain Order against Mr. Moss or the S.E.C. Judgment against Mr. Twyman.[247]

178. Ultimately, Mr. Brunt, Dr. Mannino, Mr. Olmstead, Dr. Bruner and Mr. Bentz agreed to exchange their respective LAL Project Promissory Notes for Revenue Sharing Units in the PGR

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[242] Tr. at 1032.
[243] S-27.
[244] S-27.
[245] S-27.
[246] S-27.
[247] Division's Opening Post-Hearing Brief, page 32. (Citations omitted.)

Project.[248]

179. Mr. Twyman testified that the funds from both the PGR Project and the LAL Project were pooled and used for both Projects.[249]

The DeSisto's $100,000 Investment

180. Investors Cynthia and David DeSisto reside in southern Arizona, and are retired.[250] Mrs. DeSisto had been a dental hygienist for 38 years, and Mr. DeSisto had been in the grocery business, then a district sales manager for Pepsi-Cola, before he became a pilot for various commercial airlines.[251] Mrs. DeSisto testified that she and her husband first met Kevin Krause in approximately March of 2013 when he was employed by The Solar Store in Tucson to sell and install solar panels on the DeSisto's home. [252] Mrs. DeSisto related that during conversations with Mr. Krause, he mentioned TFF and he eventually showed Mr. and Mrs. DeSisto a video about the PGR Project and solicited them to invest in the Project.[253] Mr. Moss and Mr. Sproat also spoke by telephone with the DeSistos about investing, although Mrs. DeSisto notes that she never had any contact with Mr. McHatton and had no prior relationship with Mr. Moss, Mr. McHatton, or Mr. Sproat.[254] Mrs. DeSisto testified that she and her husband were never asked about their net worth or their ability to withstand the loss of their investment.[255]

181. Following their discussions, Mr. Sproat emailed to Mr. and Mrs. DeSisto (and copying Mr. Krause on the email) several documents about TFF and the PGR Project, including a "Summary Financing Proposal – Supplementary Financial Information" ("Supplementary Financial Information").[256] The Supplementary Financial Information projected that a $100,000 investment would yield a return of $5,315,000.[257] After reading the documents provided by TFF, Mr. and Mrs. DeSisto decided to invest, and on May 16, 2013, they wired their $100,000 investment to the QSR

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[248] Tr. at 740; S-106(c), (d) and (e); Tr. at 130 – 131; S-107(b), (c) and (d); S-109(c) and (d); Tr. at 82 – 83; S-84 at 43, 47.
[249] Tr. at 1035.
[250] Tr. at 386.
[251] Tr. at 385.
[252] Tr. at 386.
[253] Tr. at 387.
[254] Tr. at 388 – 389.
[255] Tr. at 391.
[256] Tr. at 391; S-120; S-121; S-122; S-135.
[257] S-135.

bank account ending Xx4993.[258]

182. Mr. and Mrs. DeSisto received a Promissory Note and an MOU from TFF signed by Mr. Moss, Mr. McHatton, and Mr. Sproat.[259] Mrs. DeSisto testified that that she and her husband considered the funds provided to TFF to be an investment – not a loan.[260] The Promissory Note and MOU provided for a 180-day term, plus a 180-day extension at TFF's sole option.[261] The MOU stated that the DeSistos could receive "a bonus equal to 500% of the original principal amount," in addition to the original principal amount.[262] Mrs. DeSisto testified that these terms were consistent with what Mr. Krause, Mr. Moss, and Mr. Sproat had discussed with her and her husband.[263] She testified that Mr. Krause, Mr. Moss, Mr. Sproat and Mr. McHatton did not disclose (i) the Commission's 2006 Orders finding that Mr. Krause had committed securities fraud; (2) the 2008 California Desist and Refrain Order finding that Mr. Moss had committed securities fraud; or (3) the S.E.C. Judgment against Mr. Twyman.[264] Mrs. DeSisto testified that if she had known about the various judgments, she would not have invested with TFF.[265]

183. Mrs. DeSisto testified that "as time went on and the dates expired, we called a few times to get reassurances on the fact that our money was going to be returned to us at some point…. They let us know that there had been a tsunami and that that had affected the recovery efforts and to be patient."[266] Mrs. DeSisto stated that she had spoken with Mr. Krause, Mr. Moss and Mr. Sproat about the status of the returns.[267]

184. Before receipt of the DeSisto's $100,000 wire, the QSR bank account had a balance of $8,827.[268] Upon receipt of the DeSisto's funds on May 16, 2013, Mr. McHatton wired $90,600 to an account for "George H. LaBarre Galleries."[269] Of the funds wired to the George H. LaBarre Galleries,

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[258] Tr. at 393; S-45; S-124; S-125.
[259] S-126; S-127.
[260] Tr. at 402.
[261] S-126; S-127.
[262] S-127.
[263] Tr. at 400.
[264] Tr. at 418, 420.
[265] Tr. at 420 – 421.
[266] Tr. at 403.
[267] Tr. at 403.
[268] S-101(i).
[269] S-45; S-101(i).

at least $81,773 were from the DeSisto's investment. Instead of using the funds for the PGR Project, TFF used the $90,600 to purchase historical Chinese Petchelli bonds, which had been issued in 1913.[270] Mrs. DeSisto testified that she did not know anything about the George H. LaBarre Galleries or Chinese Petchelli bonds; the DeSistos believed that they were investing in the PGR Project.[271] Regardless, the Chinese Petchelli bonds have not paid off.[272]

185. On the same day that the DeSistos wired their funds to the QSR bank account, Mr. McHatton transferred $3,000 to Mr. Moss' TMC Consultants bank account.[273]

186. Division witness Rebecca Ciscel and Mr. Twyman testified that the DeSistos' money did not go to V-7000 or Mr. Twyman.[274]

187. Mr. Moss produced a copy of a Joint Venture Facilitation Partner Agreement between TFF and Omega Global Investments, Inc. dated May 14, 2013, for the sale by TFF of three Historical Chinese Petchelli Bonds. The Agreement indicated that Omega Global Investments, Inc. would then sell the bonds to a *bona fide* buyer.[275]

188. Mr. Moss testified that there is no written agreement with the DeSistos about the purchase of the Chinese bonds, but he claimed that he gave a copy of the agreement with Omega Global Investments, Inc. to the DeSistos. Mr. Moss stated that he told the DeSistos that TFF needed money to purchase the Chinese Petchelli bonds.[276]

The Stadheim's $25,000 Investment

189. Investor Robert Stadheim, Ph.D. and his wife, Myrna Stadheim live in Arizona.[277] Dr. Stadheim is a minister and a Christian clinical psychotherapist in Tempe for over 25 years.[278] The Stadheim's have three sons, one of whom has Down's Syndrome.[279]

190. Dr. Stadheim testified that during their open house in Chandler, Arizona, on August 4,

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[270] Tr. at 1108; Tr. at 1115.
[271] Tr. at 430, 437.
[272] Tr. at 416; Tr. at 1111.
[273] S-144.
[274] S-45; Tr. at 548, 705; Tr. at 790; Tr. at 1161; S-94 at 347; TFF-00005.
[275] TFF-00005.
[276] Tr. at 1226.
[277] Tr. at 269.
[278] Tr. at 271.
[279] Tr. at 270.

2013, the Stadheim's met Mr. Sproat. Dr. Stadheim and Mr. Sproat struck up a conversation when Mr. Sproat related to Dr. Stadheim that Mr. Sproat had a clergy member in his family.[280] Dr. Stadheim related that Mr. Sproat presented himself as a person of means because he was "Chef Robert" and had sold millions of dollars' worth of cookware on television. Eventually, Mr. Sproat began to talk about the investment opportunities with TFF.[281] Mr. Sproat related that there was a "Fast Freddy" – an investment through which you could double your money in two-to-three weeks – coming up through TFF. However, Mr. Sproat told Dr. Stadheim that the details were confidential "until [the Stadheims] were a member of the Fortitude family," but did relate some very general information about the PGR Project.[282]

191. Dr. Stadheim testified that Mr. Sproat provided him with several documents regarding TFF,[283] one of which stated:

> TFF is an Arizona 501(c)(3) non-profit corporation whose charter was established in 1996, and that seeks to represent the Father's heart in the world.... TFF's charter requires that it distribute 90% of net earned income to further [philanthropic and humanitarian] causes. TFF has developed financial strategies via joint ventures to be able to...advance His Kingdom by creating exponential returns....
>
> * * * * * *
>
> We are far more interested in what we can do 'with & for' you and your organization than 'what' we can obtain from you.[284]

192. The information in the documents received by Dr. Stadheim also represented that Mr. Moss had worked with "angel investors, private equity firms, venture capitalists, investment bankers, institutional fundraisers, and joint venture partners for more than two decades."[285] The documents also asserted that "Moss is known for his work in initiating and supporting programs and entities based upon 'values' and 'ethics' through charities...."[286] The documents did not disclose the 2008 California Desist and Refrain Order finding that Mr. Moss had committed securities fraud. Dr. Stadheim testified

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[280] Tr. at 272.
[281] Tr. at 272 – 273.
[282] Tr. at 275.
[283] Mr. Moss testified that the information that Mr. Sproat gave to Mr. Stadheim was likely cut and pasted from other TFF documents without Mr. Moss' or Mr. McHatton's permission. Tr. at 1117 – 1118.
[284] S-118.
[285] S-118.
[286] S-118.

that the Stadheims would not have invested if they had been aware of the California Order.[287]

193. Dr. Stadheim testified why investing with TFF appealed to the Stadheims as follows:

> Well, it was a 501(c)(3) corporation. It was about ministry, and 90 percent of the money that came in was to do ministry to help people, and they were only operating on the 10 percent. And so, I'm familiar with 501(c)(3)s, being a pastor of nonprofit organizations, and so I felt comfortable with that part of it.
>
> * * * * * *
>
> Well, 90 percent of the profit that the foundation got was given back to ministry to help people in various kinds of conditions in life. And that's always music to my heart, because that's what my life is, is helping people. So that was really a good thing.
>
> And then, I can't remember, there was some kind of ancestry of The Fortitude Foundation that was one of the, somebody's grandfather or something was a pastor or something. I'm not sure what the details were. But it seemed to be a legitimate 501(c)(3) that had been there for a period of time.[288]

194. As a result of these considerations, the Stadheims decided to invest $25,000 with TFF.[289] Dr. Stadheim testified that the goal of the investment was to build up a fund that two of his sons could administer for the son with Down's Syndrome once Dr. and Mrs. Stadheim were gone.[290] Dr. Stadheim testified that Mr. Sproat did not ask about the Stadheim's net worth or their ability to withstand a loss of their investment. Dr. Stadheim also stated that Mr. Sproat never discussed whether there were any risks to the investment.[291] Dr. Stadheim related that the Stadheims have never spoken with Mr. Moss, Mr. McHatton, or Mr. Twyman – all their dealings were with Mr. Sproat.[292]

195. On August 6, 2013, the Stadheims, on behalf of the Stadheim Family Trust, gave Mr. Sproat a cashier's check for $25,000, made payable to QSR.[293] The Stadheims received a Promissory Note for $25,000 signed by Mr. Moss, Mr. McHatton, and Mr. Sproat, which provided for a thirty-day term, plus a sixty-day extension at TFF's sole option. Under the terms of the Promissory Note, TFF would pay one hundred percent interest for the term of the note. The Promissory Note indicated that TFF would use the invested funds for "one or more business ventures in conjunction with TFF's

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[287] Tr. at 291.
[288] Tr. at 278 – 279.
[289] Tr. at 282.
[290] Tr. at 292.
[291] Tr. at 279 – 280.
[292] Tr. at 279, 294; Tr. at 1117 – 1118
[293] S-79; Tr. at 282.

established joint venture projects."[294]

196. The Stadheim's $25,000 cashier's check was deposited into the QSR bank account on August 5, 2013. At the time of the deposit, the QSR bank account had a balance of $2,302.40.[295]

197. On August 7, 2013, Mr. McHatton withdrew $7,500 in cash from the QSR bank account and made account transfers of $15,000, for a total of $22,500. Of that $22,500, at least $20,197.60 consisted of the Stadheim's investment funds.[296] Mr. McHatton gave the $7,500 in cash to Mr. Moss.[297] The $15,000 in transfers to other accounts were to accounts Mr. McHatton controlled, including a $4,500 transfer to the McHatton's personal checking account.[298] Mr. McHatton stated that he probably used the $4,500 to pay his rent, utilities, cable television service and cell phone service.[299]

198. The Stadheims have not received any repayment of their $25,000 investment.[300]

199. Dr. Stadheim testified that he has never spoken to, or had any dealings with, Mr. Twyman.[301]

The Linnebach's $30,000 Investment

200. The Linnebachs did not testify at hearing; however, Division investigator Toni Brown testified that she spoke with Greg Linnebach on September 15, 2016, about his and his wife, Judy's, investment with TFF.[302] According to Ms. Brown, Mr. Linnebach told her that he knew Mr. Moss through church groups.[303] Mr. Brown testified that Mr. Linnebach said that in August 2013, Mr. Moss asked Mr. Linnebach for a $30,000 loan and Mr. Moss told him that he would pay him back in 30 days with ten percent interest.[304] Mr. Moss gave Mr. Linnebach TFF promotional materials that stated that TFF had "projects totaling $5 billion…."[305] Ms. Brown testified that Mr. Linnebach agreed to make the loan "because Mr. Moss was a nice person and a good Christian and [Mr. Linnebach] thought he

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[294] S-78.
[295] S-165; Tr. at 1332.
[296] S-165; Tr. at 1333.
[297] S-101(k).
[298] S-165; Tr. at 1334 – 1338.
[299] Tr. at 1336.
[300] Tr. at 291.
[301] Tr. at 279.
[302] Tr. at 243.
[303] Tr. at 244.
[304] Tr. at 245.
[305] S-83.

could trust [Mr. Moss].[306]

201. On August 23, 2013, Mr. Linnebach's company, Alpha Group Administrators, Inc., issued a $30,000 check to QSR. In return, Mr. Linnebach received a Promissory Note from TFF for $30,000 signed by Mr. Moss and Mr. McHatton. This Note provided for TFF to pay 10 percent interest for the 30-day term of the Note, plus a 30-day extension at TFF's sole option.[307]

202. Although Mr. Moss stated that the $30,000 was for a loan for operational expenses,[308] the Promissory Note given to Mr. Linnebach stated that TFF planned to use the money for "one or more business ventures in conjunction with TFF's established joint venture project(s)."[309]

203. Ms. Brown testified that Mr. Linnebach told her that the Linnebachs have never received any repayment of the $30,000.[310]

204. Mr. Linnebach's money did not go to V-7000 or Mr. Twyman, and, according to Ms. Brown, Mr. Linnebach did not believe he was investing in the LAL or PGR Projects.[311]

Nelson Billy's $100,000 Investment

205. Investor Nelson Billy lives in northern Arizona and works for the Navajo Nation government in its IT department.[312] Mr. Billy testified that he first became aware of TFF in the summer of 2014 through his niece, who knew Mr. Moss and Mr. Sproat. Mr. Billy stated that he spoke with Mr. Sproat about a "diamond deal." Mr. Billy testified that Mr. Sproat told him that:

> [T]here was a company overseas somewhere, I'm not sure where, but they are actually extracting the diamonds, or something like that, that they sought investments from – you have to, if you're interested in that, you have to put in like a hundred thousand into that deal.[313]

206. Mr. Billy stated that in return for his $100,000 investment, he understood that he would begin receiving he money back after 90 days and would receive a return of 10 percent a month, or 120 percent per year.[314] Mr. Billy stated that he agreed to invest with TFF because he trusted Mr. Moss.[315]

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[306] Tr. at 252.
[307] S-83.
[308] Tr. at 1124.
[309] S-83
[310] Tr. at 251.
[311] Tr. at 245, 263; Tr. at 342 – 343.
[312] Tr. at 342 – 343.
[313] Tr. at 344.
[314] Tr. at 344 – 345.
[315] Tr. at 354, 366 – 367; S-94 at 370.

Mr. Billy testified that Mr. Sproat told him that the investment was guaranteed.[316] Between September 24, 2014, and October 10, 2014, Mr. Billy invested $100,000 with TFF, which funds were deposited in TFF's new Wells Fargo bank account ending Xx4881.[317]

207. Mr. Billy testified that most of the funds came from a $40,000 loan from his 401(k) account and all his savings.[318]

208. In return for his investment, Mr. Billy received a "Profit Participation in Revenue Share Agreement or Lender Program" signed by Mr. Moss and Mr. McHatton as TFF's directors, a September 30, 2014, Lender's Memorandum signed by Mr. Moss and Mr. McHatton on behalf of TFF, and a Senior Secured Principal, Royalty Based, Lender's Program document.[319]

209. The Profit Participation in Revenue Share Agreement or Lender Program document references "the Diamond Opportunity" and states: "TFF intends to utilize principal in one or more business ventures in conjunction with TFF's established joint venture partners and/or project(s). The principal will be directed by TFF, in accordance with TFF's sole discretion, on a best efforts basis…."[320]

210. Mr. Moss, Mr. McHatton, Mr. Sproat, and TFF did not disclose to Mr. Billy the 2008 California Desist and Refrain Order finding that Mr. Moss had committed securities fraud, or that TFF was in default on all of its promissory notes and other obligations with TFF's other 11 investors because it had failed to timely repay them their principal or promised returns.[321] Mr. Billy testified that if he had been made aware of these omissions, he would not have invested in TFF.[322] Mr. Billy testified that he has not received any repayment on his $100,000 investment, and, as a result of his investment in TFF, he has lost all of his savings.[323]

211. Mr. McHatton made over $44,000 in cash withdrawals from the TFF account containing Mr. Billy's investment funds, and Mr. Moss, Mr. McHatton, and Mr. Sproat used Mr. Billy's money

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[316] Tr. at 350.
[317] Tr. at 350, 356 – 362; S-117; S-159; S-159. Mr. Moss and Mr. McHatton had opened a dedicated bank account for TFF on September 24, 2013.
[318] Tr. at 362, 365.
[319] S-117(a) – (g).
[320] S-117(a).
[321] Tr. at 364.
[322] Tr. at 364.
[323] Tr. at 363, 365.

to make transfers to their other bank accounts, to pay Mr. Moss' mortgage, Mr. McHatton's and Mr. Sproat's rent, and for other living expenses.[324]

212. The Division observes that:

> Throughout 2012 and 2013, TFF deposited the investors' funds into McHatton's Quicksilver Realty account ending in Xx4993, where the investors' funds were comingled and pooled with TFF's prior balances and funds from other sources.
>
> With respect to Mr. Billy's $100,000 investment in September and October 2014, TFF pooled [Mr. Billy's] funds in its Wells Fargo account ending in Xx4881 with TFF's prior balance.[325]

213. Mr. Twyman notes that Mr. Billy acknowledged that he and Mr. Billy have never spoken;[326] that Mr. Billy did not receive any documents from Mr. Twyman or V-7000;[327] and notes that Mr. Billy's TFF investment funds did not go to V-7000 or Mr. Twyman.[328] According to Mr. Moss and Mr. McHatton, Mr. Billy's money went toward the costs of infomercials, a $25,000 Archimedes dividend disbursements program and TFF's alleged operational expenses.[329]

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214. The Division provided documentation that in August 2015, Mr. Moss and TFF sent emails to Dr. Bruner, the DeSistos, and other investors seeking additional investments in the PGR Project.[330] The email from Mr. Moss to investors stated: "Here…is the most recent update from V-7000, our joint venture partner."[331] An attachment to Mr. Moss' email was titled "Ventures 7000 Official News Brief" ("V-7000 News Brief") and featured a photo of Mr. Twyman on the first page.[332] The V-7000 News Brief indicated that V-7000 was on the verge of "recovery and distribution of immense wealth,"[333] stating:

> We are poised on the threshold of achieving all that we have so diligently pursued! In fact, our prospects for phenomenal success have never been greater nor more tangible than they are today!

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[324] S-168; S-171; S-173; Tr. at 1249 – 1250; 1253 – 1254; S-147; S-157; S-162; S-163; S-164; S-175; S-176.
[325] Division's Opening Post-Hearing Brief, page 42.
[326] Tr. at 353.
[327] Tr. at 368.
[328] Tr. at 549.
[329] Tr. at 1125, 1128; Tr. at 1162, 1249 – 1250; Tr. at 1343, 1347, 1363 – 1364; S-94 at 374, 384 – 385; TFF-00002; S-173.
[330] S-26; S-134.
[331] S-26; S-134.
[332] S-26; S-134.
[333] S-26.

* * * * * *

> Ventures 7000 has successfully identified and verified multiple treasure sites over the years. We have now shifted from a "treasure hunting mode" to a "treasure recovery mode!" This shift presages the ability for Ventures 7000 to engage in the net revenue distribution process in the foreseeable future. Future updates may contain some financial tips on lessening the tax blow of impending partner distributions.[334]

215. The V-7000 News Brief also stated: "As we finally move into the final recovery stage, *there will be a small window of opportunity for existing partners to increase their investment position by purchasing additional revenue sharing units at a reduced rate* and thereby increase their distribution payout."[335] Dr. Bruner and Mrs. DeSisto testified that they believed this language offered an opportunity for further investment of money in the PGR Project.[336]

216. The Division notes that in the V-7000 News Brief, Mr. Moss, TFF, and V-7000 solicited investment in additional revenue sharing units without disclosing: (1) the $250,000 offering in June 2012, which had represented that the PGR Project was already "poised for completion"[337] and which Mr. Brunt had fully funded, had failed to pay any returns; (2) the S.E.C. Judgment against Mr. Twyman; and (3) the 2008 California Desist and Refrain Order finding that Mr. Moss had committed securities fraud.

217. None of the TFF investors holding revenue sharing units in the PGR Project purchased any additional units as a result of the solicitation in the V-7000 News Brief.

Money Received by TFF

218. In all, TFF received $1,247,550 from individuals between 2012 and 2014, but has only returned $5,525.83:

Investor	Date	Amount	Description	Amount Returned	Citation
Brunt	6/21/2012	$250,000	PGR Project	$2,000	S-105(a); S-105(d)
Brunt	6/25/2012	$18,750	CACN		S-69 at 15 – 16; Tr. at 739
Brunt	7/6/2012	$111,800	Brazilian Bond		S-70
Brunt	8/27/2012	$18,000	TFF Promissory Note		S-105(c)
Brunt	10/30/2012	$125,000	LAL Project		S-45; S-99
Mannino	10/31/2012	$75,000	LAL Project	$1,687.50	S-106(a) and (b)

[334] S-26.
[335] S-26 (emphasis in original); S-134.
[336] Tr. at 98; Tr. at 417.
[337] S-70.

Olmstead	11/14/2012	$100,000	LAL Project		S-107(a) and (e)
Clark	11/20/2012	$50,000	LAL Project	$200	S-108(a) and (b)
Bruner	12/4/2012	$100,000	LAL Project	$888.33	S-109(a) and (b)
Spencer	12/19/2012	$50,000	LAL Project	$750	S-110(a) and (b)
Bentz	1/8/2013	$50,000	LAL Project		S-111(a) and (b)
Flores	4/25/2013 – 5/23/2013	$44,000	LAL Project		S-112(a) and (b)
DeSisto	5/16/2013	$100,000	Chinese Bonds (DeSistos believed they had invested in the PGR Project)		S-126; S-127
Stadheim	8/6/2013	$25,000	TFF Promissory Note		S-78
Linnebach	8/23/2013	$30,000	TFF Promissory Note		S-83
Billy	9/24/2014 – 10/7/2014	$100,000	African Diamond		S-117(a), (b), and (c)
		$1,247,550		**$(5,525.83)**	

LEGAL ANALYSIS AND CONCLUSIONS

Summary of Parties Positions

219. The Division claims that the Respondents offered and sold securities, or participated in and/or induced the sale of securities, within and from Arizona, in the form of investment contracts, notes and stocks, and the Respondents were not registered with the Commission as dealers or sales persons. Further, the Division alleges that the Respondents committed fraud in the offer and sale of securities, and that Mr. Moss and Mr. McHatton were controlling persons of TFF and, therefore, they are jointly and severally liable for any fraudulent acts committed by TFF. The Division also maintains that Mr. Twyman was a controlling person of V-7000 and, therefore, Mr. Twyman and V-7000 are jointly and severally liable for any fraudulent acts committed by V-7000. In total, the Respondents received a total of $1,242,024.17 in funds from 16 individuals. The Division contends that Mr. Moss, Mr. McHatton, and Mr. Sproat, TFF, and the respective marital communities of Robert and Jennifer Moss, and Jeffrey and Starla McHatton, should be required to pay restitution, jointly and severally, in a total amount of $1,242,024.17. The Division contends that of the $1,242,024.17, Mr. Krause should be required to pay restitution in an amount of $144,000.00, jointly and severally with Mr. Moss, Mr. McHatton, Mr. Sproat, TFF, and the respective marital communities of Robert and Jennifer Moss, and Jeffrey and Starla McHatton. Finally, the Division asserts that of the $1,242,024.17, Mr. Twyman and

V-7000 should be required to pay restitution in an amount of $744,474.17, jointly and severally with Mr. Moss, Mr. McHatton, Mr. Sproat, TFF, and the respective marital communities of Robert and Jennifer Moss, and Jeffrey and Starla McHatton.

220. The Division requests that the Commission direct Mr. Moss and his marital community to pay, jointly and severally, an administrative penalty of $240,000; Mr. McHatton and his marital community to pay, jointly and severally, an administrative penalty of $240,000; Mr. Sproat to pay an administrative penalty of $240,000; TFF to pay an administrative penalty of $240,000; Mr. Krause to pay and administrative penalty of $45,000; and Mr. Twyman to pay an administrative penalty of $35,000.

221. Mr. Moss and Mr. McHatton assert that they did not violate any registration requirements because the money received from the various individuals were in the form of loans, as evidenced by promissory notes. Mr. McHatton claims that, if the loans are deemed securities, they are exempt from registration pursuant to A.R.S. § 44-1843(A)(6), because TFF is a non-profit entity. Mr. Moss and Mr. McHatton also assert that there is no evidence on the record supporting the Division's allegation that they and TFF committed fraud when selling the securities by failing to disclose the 2008 California Desist and Refrain Order against Mr. Moss, and the Commission's 2006 Krause Orders. Further, Mr. Moss and Mr. McHatton deny that they misused any investor funds. Finally, Mr. McHatton notes that TFF's Articles of Incorporation state the "private property of the members, officers, and directors of this corporation shall be forever exempt from liability for debts and obligation of the corporation."[338] As such, he argues that he and Mr. Moss, and their respective marital communities, cannot be held individually liable for restitution or administrative penalties.

222. Mr. Twyman asserts that he and V-7000 did not violate any provisions of the Securities Act because, except for Mr. Brunt, they did not have any direct interactions with the investors and did not participate in or induce the sales of any securities. Further, Mr. Twyman claims that he and V-7000 did not receive the funds from TFF; rather the funds went to the Wycliffe Trust. Mr. Twyman also asserts that he is not liable as a controlling person of V-7000 because he acted in good faith and did not

[338] S-4.

directly or indirectly induce the acts underlying any unlawful action.

APPLICABLE LAW

223. Arizona courts have stated that the Securities Act is a remedial measure that should be liberally construed to protect the public.[339]

224. A.R.S. § 44-1801(27)(a) defines "Security," in part, as "any note, stock, … commodity investment contract, … evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, … investment contract, … or, in general, any interest or instrument commonly known as a security."

225. In *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946), the United States Supreme Court outlined the definition of an investment contract, which is known as the *Howey* test. Under the *Howey* test, "an 'investment contract' arises whenever a person (1) invests money (2) in a common enterprise (3) with an expectation of profits from the efforts of others, and when such third-party efforts are 'the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.'"[340]

226. Further, Arizona courts have determined that substance, rather than form, controls when establishing "whether a financial arrangement constitutes an investment contract because 'the definition of a security embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of money of others on the promise of profits.'"[341]

227. When determining whether a note qualifies as a security under the Securities Act, the analysis depends upon whether the issue is (1) a violation of the registration provisions, or (2) a violation of the anti-fraud provisions of the Securities Act.[342] In *State v. Tober*, 173 Ariz. 211 (1992), the court held that based on the use of the words "any note" in the statute, all notes are securities that must be registered with the Commission unless an exemption applies.[343]

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[339] *Hirsch v. Arizona Corp. Com'n*, 237 Ariz. 456 (App. 2015). See also *Siporin v. Carrington,* 200 Ariz. 97, 101 (App. 2001), Arizona courts liberally construe the term 'security.'

[340] *Siporin*, at 101 (quoting *Nutek Information Systems, Inc. v. Arizona Corp. Com'n*, 194 Ariz. At 108 (App. 1998); *Howey*, at 299).

[341] *Siporin*, at 101 (quoting *Nutek*, at 108, *Howey*, at 299).

[342] Division's Opening Post-Hearing Brief, page 51.

[343] *Tober*, at 213.

228. Whether a note is a security under the Securities Act's antifraud statutes is determined by the application of the test established by the United States Supreme Court in *Reves v. Ernst & Young,*[344] which was adopted in Arizona by *MacCollum v. Perkinson.*[345] Under the *Reves* analysis, there is a presumption that notes are securities. However, this presumption may be rebutted by a demonstration by a respondent that the note bears a strong resemblance to one of a judicially-crafted list of instruments that are not securities – notes secured by a mortgage, for example. There are four factors to determine whether an instrument should be considered to be a security: (1) "the motivations that would prompt a reasonable seller and buyer to enter into [the transaction],"[346] (2) the plan of distribution, (3) the reasonable expectations of the investing public, and (4) whether some risk-reducing factor would render application of the Securities Act unnecessary.

229. A.R.S. § 44-1841 states it is unlawful to sell or offer for sale within or from Arizona any securities that have not been registered pursuant to the Securities Act, unless the securities are exempt from registration.

230. A.R.S. § 44-1842 states it is unlawful for any dealer or salesman to sell or offer for sale within or from Arizona unless the dealer or salesman is registered as required under Article 9 of the Securities Act.

231. A.R.S. § 44-1843(A)(6) states that "securities issued by a person that is organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual…" are exempt securities.

232. A.R.S. § 44-1991(A) states it is a fraud to misstate or omit any material fact that might mislead an investor. This includes statements made in the offering and sale of exempt securities.

233. A.R.S. § 44-1999(B) states every person who controls anyone liable for a violation of A.R.S. § 44-1991 is jointly and severally liable with, and to the same extent as, the controlled person.

234. A.R.S. § 44-2003(A) allows for an action to be brought pursuant to A.R.S. § 44-2032 against "any person … who made, participated in or induced the unlawful sale or purchase, and such

[344] 494 U.S. 56 (1990).
[345] 185 Ariz. 179 (App. 1996).
[346] *Reves,* 494 U.S. at 66.

persons shall be jointly and severally liable."

235. A.R.S. § 44-2032 allows the Commission to issue a cease and desist order and direct payment of restitution if a person has engaged in any act, practice or transaction constituting a violation of the Securities Act.

236. A.R.S. § 44-2033 states that the respondent bears the burden of proving that an offering is exempt from registration.

237. A.R.S. § 44-2036 allows the Commission to impose administrative penalties against a person who is in violation the Securities Act, not to exceed $5,000 per violation.

238. A.A.C. R14-4-308(C)(1) requires restitution to be made in cash equal to the fair market value of the consideration paid, together with interest, less offsets for any principal, interest, or other distributions received on the security for the period from the date of repayment.

CLASSIFICATION OF INVESTMENTS

Investment Contracts

239. The Division contends that TFF, Mr. Moss, Mr. McHatton, Mr. Sproat, and Mr. Krause offered and sold securities in the form of investment contracts.[347] "[A]n 'investment contract' arises whenever a person (1) invests money (2) in a common enterprise (3) with an expectation of profits from the efforts of others, and when such third-party efforts are 'the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.'"[348]

Investment of Money

240. The Division notes that the investors in the various projects, per instructions from TFF, either wired funds to Mr. McHatton's QSR bank account, wrote checks payable to QSR, or after 2013, wired funds to TFF's own bank account.[349]

241. Based on the evidence presented, we find that there has been an investment of money and the first prong of the *Howey* test has been satisfied with respect to all of the described investments/transactions.

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[347] A.R.S. § 44-1801(26).

[348] *Siporin*, at 101 (quoting *Nutek Information Systems, Inc. v. Arizona Corp. Com'n*, 194 Ariz. At 108 (App. 1998); *Howey*, at 299).

[349] S-56, S-45, S-51, S-79, and S-156.

Common Enterprise

242. The Division notes that courts employ two tests to determine whether there is a common enterprise: (1) a horizontal commonality test, and (2) a vertical commonality test. The Division observes that Arizona courts have indicated that the common enterprise element may be met through either horizontal or vertical commonality.[350]

243. "A common enterprise exists when 'the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties.'"[351] A common enterprise will be found when either horizontal commonality or vertical commonality exists.[352] "Horizontal commonality requires a pooling of funds collectively managed by a promoter or third party,"[353] while vertical commonality is "an enterprise common to an investor and seller, promoter, or some third party," and is established when "the fortunes of the investors are linked with those of the promoters."[354]

Horizontal Commonality

244. The Division contends that horizontal commonality exists because in 2012 and 2013 TFF placed the investors' funds into Mr. McHatton's QSR bank account, and after 2013 into TFF's own account, which funds were then commingled and pooled with TFF's own funds from other sources.[355] In addition, Mr. Twyman testified that the funds from TFF's investors for the PGR and LAL Projects had been pooled "and we used it for both projects."[356]

Vertical Commonality

245. The Division reasons that vertical commonality is present because TFF's repayment of the investors' principal, and the predicted investment returns, depended upon the success of TFF's joint ventures with Mr. Twyman and V-7000, or on TFF's projects unrelated to the PGR or LAL Project. "Thus, there was a direct correlation between the success of TFF's various joint ventures and projects,

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[350] *Daggett v. Jackie Fine Arts, Inc.*, 152 Ariz. 559 (App. 1987).
[351] *Vairo v. Clayden*, 153 Ariz. 13, 17 (App. 1987) (quoting *S.E.C. v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476, 482 n. 7 (9th Cir.)).
[352] *Vairo*, 153 Ariz. at 17, 734 P.2d at 114.
[353] *Daggett*, at 565.
[354] *S.E.C. v. R.G. Reynolds Ent., Inc.*, 952 F.2d 1125 (9th Cir. 1991).
[355] Division's Opening Post-Hearing Brief, page 49. S-97, S-101.
[356] Tr. 1035.

and the success of the investors in receiving returns on their investments. The fortunes of the investors were linked with those of TFF."[357]

246. Based on the testimony and evidence presented, we find that both horizontal and vertical commonality exist, and the second prong of the *Howey* test, common enterprise, has been satisfied.

Expectation of Profits Through the Efforts of Others

247. Under the third prong of the *Howey* test, it must be established that "'the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts, which affect the failure or success of the enterprise.'"[358]

248. The Division contends that all Respondents supplied the managerial efforts that affected the failure or success of the enterprise.[359] The Division points out that the JVFA between TFF and Twyman's entities—Wycliffe Trust, V-7000, ARSI, APMI, and ERA (collectively defined in the JVFA as "Wycliffe,"[360] reads: "Wycliffe is actively engaged in several business activities that offer extremely attractive investment returns…."[361] The JVFA made clear that it would be the responsibility of V-7000 and other Twyman entities to implement the projects that would ultimately provide the investment returns on the PGR and LAL Project.[362] Nothing in the JVFA requires the investors to participate in managing the projects. The Division also notes that the MOUs between TFF and investors for all of TFF's ventures indicate that TFF would provide managerial support "arrang[e] and facilitate said transactions and will also be providing ongoing oversight for the business ventures…."[363] As with the JVFA, the MOUs did not require that the investors have a role in managing the projects.

249. Based on the evidence presented, we find that there was an expectation by the investors of profits through the efforts of others, and the third prong of the *Howey* test has been satisfied.

250. Based on the foregoing discussion, we find that the investment contracts offered and sold by TFF, Mr. Moss, Mr. McHatton, Mr. Sproat, and Mr. Krause constitute securities as defined in

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[357] Division's Opening Post-Hearing Brief, page 49.
[358] *Nutek*, at 108, (quoting *S.E.C. v. Glenn W. Turner Enterprises, Inc.*, 474 F2d 476, 482 (9th Cir.), cert. denied, 414 U.S. 821 (1973)).
[359] Division's Post-Hearing Opening Brief, 50.
[360] S-114.
[361] S-114.
[362] S-114.
[363] S-106, S-107, S-108, S-109.

A.R.S. § 44-1801(26).

Promissory Notes

251. Although A.R.S. § 44-1801(26) states that "any note" is deemed to be a security, Arizona courts have developed two separate approaches to ascertain whether a specific note is deemed to be a security note or a non-security note for the purposes of the Securities Act. As stated by the Division, the analysis adopted depends upon whether the issue is the violation of the registration provisions of the Securities Act, or the violation of the anti-fraud provisions of the Securities Act.[364]

Notes as Securities for Purposes of the Registration Provisions of the Securities Act

252. The Division observes that in *Tober*, the Arizona Supreme Court held that the plain language of the Securities Act means that all notes are securities that must be registered with the Commission, unless a specific exemption applies.[365] The Division states that TFF styled its notes as "Promissory Note,"[366] which provide for a payment of annual interest after a set term. The Division points out that under A.R.S. § 44-2033, it is the Respondents' burden to prove that an exemption applies to the Promissory Notes. The Division asserts that the Promissory Notes meet the definition of "any note," and that the Respondents failed to present any evidence that any exemption applies to TFF's Promissory Notes. Thus, according to the Division, the Promissory Notes are securities for purposes of the registration provision of the Securities Act.

253. In his Post-Hearing Brief, without citation, definition, or explanation, Mr. Moss states: "No registration or disclosure needed for a Specific Use pNote."[367] The Division notes that the statutes do not contain an exemption for a "Specific Use pNote."[368]

254. A.R.S. § 44-1801(26) broadly states that "any note" is a security unless an exemption applies. The Respondents did not present any evidence demonstrating that the Promissory Notes

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[364] Division's Opening Post-Hearing Brief at 51, citing State v. Tober, 173 Ariz. 211 (1992) (analyzing note as a security for registration violation), McCallum v. Perkinson, 185 Ariz. 179 (1996) (analyzing note as a security for anti-fraud violation.)

[365] *Tober*, at 213.

[366] S-78, S-83; S-105; S-106, S-107; S-108; S-109; S-110; S-111; S-112; S-126.

[367] Moss Post-Hearing Brief (Answer) Memorandum, page 51.

[368] The Division notes that in their response briefs, Mr. Moss, Mr. McHatton and TFF "make bald denials and assertions without citing to any portion of the record. In particular, Moss responds to the Division's detailed recitation of the evidence by simply asserting "Not true," "No Relevance," "False Testimony" and "No Sec. Violations Committed." Division's Reply Post-Hearing Memorandum Re: Respondents Robert J. Moss and Jennifer L. Moss, Jeffrey D. McHatton and The Fortitude Foundation, page 2.

executed by TFF's investors are exempt under Arizona law. As such, we find that, except as otherwise noted below, the Promissory Notes issued by TFF are securities under the registration provisions of the Securities Act.

Notes as Securities for Purposes of the Anti-Fraud Provisions of the Securities Act

255. The Division states that Arizona courts apply the "family resemblance" test enunciated by the U.S. Supreme Court in *Reves*[369] when determining whether a note is a security for purposes of the Securities Act's anti-fraud provisions.[370] Under *Reves*, there is a presumption that notes are securities.[371] The *Reves* test uses four factors to assess whether the Promissory Notes are securities under the "family resemblance" test.

256. The first *Reves* factor is "to assess the motivations that would prompt a reasonable seller and buyer to enter into [the transaction]."[372] The Division states: "If the seller's purpose is to raise money for the general use of business enterprise or to finance substantial investments, and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a security."[373] The Division observes that TFF's goal was to raise funds and use the proceeds for its business ventures, and the investors obtained the Promissory Notes with the expectation of receiving a sizable return on their investment. The Division concludes that the Promissory Notes are securities under the first *Reves* factor.

257. The second *Reves* factor scrutinizes the plan of distribution to evaluate whether the note at issue is an instrument in which there is "common trading for speculation or investment."[374] Courts consider that when individuals are solicited, as opposed to financial institutions, the "common trading" element has been satisfied.[375] The Division observes that, in this case, TFF sold the Promissory Notes to investors, and also notes that those investors have a need for protection by the securities laws. Accordingly, the Division concludes that the Promissory Notes are securities under the second *Reves*

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[369] 494 U.S. 56 (1990).
[370] *McCollum v. Perkinson*, 185 Ariz. 179 (App. 1996).
[371] 494 U.S. at 65.
[372] *Reves*, 494 U.S. at 66.
[373] Division's Post-Hearing Opening Brief, page 53, citing *Reves* at 66 – 67.
[374] *Reves,* at 68 – 69.
[375] *Stoiber v. S.E.C.*, 161 F.3d 745 (D.C. Cir. 1998).

factor.[376]

258. An examination of the reasonable expectations of the investing public is the third *Reves* factor.[377] The Division explains that the third factor is closely related to the first factor, and evaluates whether a reasonable member of the investing public would consider the notes to be investments. The Division states that several of the investors testified that they considered the funds they provided to TFF to be investments, not loans.[378] In addition, most of the Promissory Notes and MOUs for each investor stated that the investor would be entitled to participate in the profits generated by TFF's use of the investor's money.[379] As such, the Division contends that the investors had a reasonable expectation that they were investing in a security. The Division also observes that an Executive Summary for the LAL Project sent to investors described the Project as a "very unique investment opportunity…. The bottom line is that although the upside potential of this investment is extremely high, the downside risk is less than many traditional funding platforms."[380] The Division concludes that, because TFF characterized the Promissory Notes as investments, it was reasonable for TFF's investors to believe that the Notes were securities.

259. The final *Reves* factor is whether other some factor, such as the existence of regulatory scheme, reduces the risk of the instrument and renders an application of securities laws unnecessary. The Division asserts that the evidence in this matter demonstrates that there are "no risk-reducing factors that would obviate the need for the securities laws to apply."[381]

260. The Division concludes that (1) the Promissory Notes do not fall under any of the categories of non-security notes, and (2) application of the four *Reves* factors demonstrates that the Promissory Notes do not bear a "family resemblance" to any of the recognized non-securities. Thus, the Promissory Notes are securities for purposes of the anti-fraud provisions of the Securities Act.

261. As noted above, Mr. Moss states that the notes are exempt from the Securities Act because they are "Specific Use pNotes."

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[376] Division's Opening Post-Hearing Brief, page 54.
[377] *Reves* at 68.
[378] Tr. at 90, 317, 740.
[379] S-106, S-107, S-108, S-109, S-110, S-111, S-112.
[380] S-55; S-94, Exhibit 23.
[381] Division's Opening Post-Hearing Brief, page 55.

262. Despite Mr. Moss' unsupported assertion, the Promissory Notes are not within any category of non-security notes, and the application of the *Reves* factors demonstrates that the Promissory Notes in this matter are securities for the purposes of the anti-fraud provisions of the Securities Act.

Stock Shares

263. The Division asserts that on June 25, 2012, Mr. Moss and TFF sold Mr. Brunt $18,750 worth of stock in CACN, and notes that the Securities Act includes any stock within the definition of a security. Therefore, the stock shares are securities.[382]

264. Mr. Moss argues that the $18,750 that Mr. Brunt deposited into Mr. Moss' TMC, Inc.'s account was for a chapter license – not a stock purchase.

265. Although Mr. Brunt believed that he purchased stock, he did not produce a stock certificate from Mr. Moss, CACN, or TFF.[383] Nor was there any promissory note accompanying the monetary exchange. Although there was some testimony regarding that this deposit was for the benefit of TFF, the funds were not deposited into the QSR bank account as were all the other investments with TFF.

266. Based on the foregoing discussion, we find that the Division did not show by a preponderance of the evidence that the $18,750 provided by Mr. Brunt to Mr. Moss was a stock purchase for any TFF investment.

Religious Exemptions

267. Mr. McHatton asserts that the securities were exempt from registration under A.R.S. § 44-1843(A)(6), which states that A.R.S. §§ 44-1841 and 44-1842 do not apply to:

> Securities issued by a person that is organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder or individual…."

268. The Division argues that the exception cited by Mr. McHatton does not apply. The Division notes that during the investigation, it subpoenaed TFF to produce the records regarding TFF's

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[382] Division's Opening Post-Hearing Brief, page 55, citing to S-69 at 15; Tr. at 739.

[383] In his Post-Hearing Brief at page 6, Mr. McHatton stated: "Moss acted independently of TFF as CACN was an entity that he and a partner in Las Vegas had created. Mr. Brunt acted independently as well. McHatton was not privy to any of the conversations between Mr. Moss and Mr. Brunt.

distributions that supported philanthropic, charitable or humanitarian causes. TFF did not produce and records or documents, stating, "No responsive documents exist at this time."[384] The Division believes that Mr. Moss and Mr. McHatton only claimed to operate as a 501(c)(3) religious or charitable entity, and then used the entity to convince investors of their sincerity in supporting various philanthropic and missionary efforts. The Division claims that once the investors' funds were received, Mr. Moss and Mr. McHatton misused the funds for their personal expenses. The Division concludes: "In short, A.R.S. § 44-1843(A)(6) does not provide an exemption for securities issued by Respondents running an affinity fraud under the guise of a religious or charitable organization."[385]

269. Other than his simple assertion that the securities fall under the religious exemption, Mr. McHatton presented no evidence supporting the claim that TFF was a *bona fide* religious or charitable entity. Based on the testimony and documentary evidence presented, we find that the securities are not exempt under A.R.S. § 44-1843(A)(6).

WITHIN OR FROM ARIZONA

270. The Division notes that under the A.R.S. § 44-1841, it is illegal "to sell or offer for sale within or from this state any securities unless the securities have been registered … or are federally covered securities." Further, "within or from this state" also applies to violations of A.R.S. § 44-1842 and A.R.S § 44-1991(A), and can apply to transactions that do not occur entirely within Arizona.[386] The Division provided evidence that TFF is incorporated in and operates from Arizona, and further that TFF, Mr. Moss, Mr. McHatton, Mr. Sproat and Mr. Krause sold the securities to residents of Arizona, except for Mr. Olmstead, who lives in Florida. Thus, each investment was sold "within or from" Arizona.[387]

271. The Respondents did not present any arguments to refute the Division's assertion that the securities were sold within or from Arizona.

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[384] S-104.

[385] Division's Reply Post-Hearing Memorandum Re: Respondents Robert J. Moss and Jennifer L. Moss, Jeffrey D. McHatton and The Fortitude Foundation, page 4.

[386] Citing *Chrysler Capital Corp. v. Century Power Corp.,* 800 F. Supp. 1189, (S.D.N.Y. 1992). "[T]he words 'from this state' were included in the statute 'to prevent the setting up of a base of operations within this state and the selling and offering for sale of securities to people outside the State of Arizona from within this state.'" (Quoting Ariz. Att'y Gen. Op. No. 56-140 (August 24, 1956.))

[387] Division's Opening Post-Hearing Brief, page 56.

272. Based on the testimony and evidence presented, we find that TFF, Mr. Moss, Mr. McHatton, Mr. Sproat, and Mr. Krause sold the securities within or from Arizona pursuant to A.R.S. § 44-1841.

SECURITIES REGISTRATION

273. The Division also argues that TFF, Mr. Moss, Mr. McHatton, Mr. Sproat, and Mr. Krause violated A.R.S § 44-1841 by failing to register the securities with the Commission.[388] Although A.R.S § 44-1841 provides exemptions for certain securities, the Division asserts that it is a respondent's burden to prove that the offered security is exempt from registration requirements, and these Respondents failed to meet that burden. In addition, the Division notes that the Respondents did not make the Form D notice filing required for sales of exempt securities.[389]

274. As noted above, the Respondents did not meet their burden of proof that the securities were exempt from registration. Thus, we find that TFF, Mr. Moss, Mr. McHatton, Mr. Sproat, and Mr. Krause violated A.R.S. § 44-1841 by failing to register TFF's securities with the Commission.

DEALER REGISTRATION

275. The Division notes that A.R.S. § 44-1842 requires a person who sells securities within or from Arizona to register as a dealer or sales person with the Commission. Under A.R.S. § 44-1801(9)(b), a "dealer" is partially defined as "an issuer, other than an investment company, who, directly or through an officer, director, employee or agent who is not registered as a dealer under this chapter, engages in selling securities issued by such issuer." A "salesman" is defined as "an individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities" within Arizona.[390]

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[388] *See* S-1.

[389] Division's Opening Post-Hearing Brief, page 57.

[390] A.R.S. § 44-1801(22).

276. The Division argues that TFF acted as a dealer when it sold securities to investors in Arizona and Florida, through Mr. Moss, Mr. McHatton, Mr. Sproat, and Mr. Krause. Further, the Division asserts:

> TFF's Promissory Notes and Memoranda of Understanding and other agreements with investors, which Moss, McHatton and Sproat signed on TFF's behalf, establish that TFF authorized these Respondents to sell TFF's securities. Krause's authority to sell TFF's securities is established by: (i) the $1,000 check McHatton wrote to Krause days after Mr. Flores invested with the notation, "For Flores;" and (ii) TFF's 2014 check to Krause for $2,000.[391]

277. The Division notes that TFF, Mr. Moss, Mr. McHatton, Mr. Sproat, and Mr. Krause have never been registered with the Commission as securities dealers or sales persons;[392] thus, they are in violation of A.R.S. § 44-1842 with respect to the sales of securities.

278. The Respondents did not specifically respond to this allegation, other than to state that the securities were exempt from registration.

279. Based on the testimony and evidence presented, we find that TFF, Mr. Moss, Mr. McHatton, Mr. Sproat, and Mr. Krause violated A.R.S. § 44-1842 by failing to register as securities dealers or sales persons.

SECURITIES FRAUD

280. The Securities Act is "designed to protect the public from fraud and deceit arising in securities transactions."[393] The anti-fraud provisions of the Securities Act allow for a finding of a primary liability, as well as a secondary liability under the control person provision.

281. A primary violation of A.R.S. § 44-1991(A) may be either direct or indirect:

> It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from this state involving an offer to sell or buy securities, or a sale or purchase of securities…directly or indirectly to do any of the following:
>
> 1. Employ any devise, scheme or artifice to defraud.
> 2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading.
> 3. Engage in any transaction, practice or course of business which operates

[391] Division's Opening Post-Hearing Brief, page 58.
[392] S-2.
[393] *Shorey v. Ariz. Corp. Comm'n*, 238 Ariz. 253 (Appl. 2015).

or would operate as a fraud or deceit.

282. Under A.R.S. § 44-1991(A)(2), a "material fact" is a statement or omission that would be significant in the deliberations of a reasonable buyer.[394] However, under this test, it is not necessary to establish whether an omission or misstatement was actually significant to an investor,[395] nor that the investor relied on the material fact.[396] In addition, a finding of an intent to defraud is not necessary to establish a civil violation of A.R.S. § 44-1991(A)(2). Further, enforcement actions brought by the Commission are not subject to the loss causation requirement applicable to private securities actions.[397]

283. Arizona courts have found that A.R.S. § 44-1991(A)(2) imposes an affirmative duty on offerors not to mislead investors, stating: "This requirement not only removes the burden of investigation from an investor, but places a heavy burden upon the offeror not to mislead potential investors in any way."[398] Finally, A.R.S. § 44-1991(A)(2) makes a seller strictly liable for any misrepresentations or omissions made.[399]

284. The Division argues that TFF, Mr. Moss, Mr. McHatton, and Mr. Sproat directly violated A.R.S. § 44-1991(A), by the following actions, among others:

- Representing to investors TFF's and V-7000's "intense commitment to a Biblically based code of business ethics," and their "foundational principles of honesty, integrity, productivity, stewardship, transparency and fairness," without disclosing the 2008 California Desist and Refrain Order against Moss or the S.E.C. Judgment against Twyman;
- Misrepresenting that "TFF's Charter requires that it distribute 90% of net earned income to further [philanthropic and humanitarian] causes," when TFF is unable to produce any such charter, and it does not have any records of any distributions to philanthropic, charitable or humanitarian causes;
- Representing to investors that McHatton, Sproat, and Moss, are trustworthy without disclosing their repeated misuse of investors' money for their personal living expenses;
- Making unrealistic projections of the time and amounts of investment returns, which lack an historical or factual basis;
- Failing to disclose to Mr. Flores or Mr. and Mrs. DeSisto the Commission's 2006 Krause Orders;

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[394] *Hirsch v. Ariz. Corp. Comm'n*, 237 Ariz. 456 (1976).
[395] *Hirsch,* at 464.
[396] *Trimble v. American Savings Life Insurance Company*, 152 Ariz. 548 (App. 1986).
[397] *Hirsch* at 463.
[398] *Hirsch* at 463; *Trimble* at 553.
[399] *Garvin v. Greenbank*, 856 F.2d 1392 (9th Cir. 1988).

- Misdirecting and misusing the DeSistos' $100,000.00 to purchase historical Chinese Petchelli bonds; and
- Failing to disclose to Mr. Billy that TFF was in default on all of its promissory notes and other obligations with its other eleven (11) investors because it had failed to timely repay their principal let alone the promised returns.[400]

285. Mr. Moss, Mr. McHatton, and TFF claim that they were not obligated to disclose to investors Mr. Moss' 2008 California Desist and Refrain Order. Mr. Moss states that none of the investors live in California, and none of the sales occurred there. As such, it was not necessary that investors be advised of the 2008 California Desist and Refrain Order. In addition, they assert that they cannot be liable for failing to disclose to investors the Commission's 2006 Krause Orders because Mr. Moss and Mr. McHatton did not know about the Orders.

286. The Division asserts that Mr. Moss, Mr. McHatton, and TFF are mistaken; the failure to disclose the various orders was a material omission under the law because a reasonable investor would want to know whether the person offering the investment has previously violated securities laws. In addition, the Division argues that, regardless of whether Mr. Moss and Mr. McHatton knew about the Commission's Orders against Mr. Krause, A.R.S. § 44-1991(A)(2) is a strict liability statute. Thus Mr. Moss, Mr. McHatton, and TFF are strictly liable for the failure to disclose the orders against Mr. Krause.

287. Given the testimony and evidence presented in this matter, through the actions and omissions noted above, we find that Mr. Moss, Mr. McHatton, Mr. Sproat, Mr. Krause, and TFF have violated the provisions of A.R.S. § 44-1991(A).

TWYMAN AND V-7000

Division's Position

288. The Division argues the Mr. Twyman and V-7000 are liable for TFF's unlawful securities offers and sales for the PGR and LAL Projects because they induced and participated in those offers and sales.

289. The Division notes that it brought the instant action pursuant to A.R.S. § 44-2032, which authorizes Commission enforcement actions for alleged violations of the Securities Act – including

[400] Division's Opening Post-Hearing Brief, pages 60 – 61.

violations of the registration provisions and the anti-fraud provisions. The Division observes that A.R.S. § 44-2003(A) states that, in an action brought under A.R.S. § 44-2032, "any person … who made, participated in or induced the unlawful sale or purchase," may be jointly and severally liable.[401] The Division states: "Although Twyman and V-7000 may not have had any direct interactions with the investors in the Philippine gold recovery and low-alpha lead projects, Twyman and V-7000 nonetheless participated in and/or induced the sales"[402] of the securities for these projects.

290. The Division argues that Mr. Twyman and V-7000 participated in the securities sales by the other Respondents because the majority of the proceeds from the PGR and LAL Project were wired to Mr. Twyman very soon after the investments were made. In addition, under the terms of the JVFA, Mr. Twyman and V-7000 had a significant stake in the funds raised by TFF, and the money was pooled and used for both projects.[403] As such, the Division argues that "[b]ecause Twyman and and V-7000 had a financial stake in the monies TFF raised through its unlawful securities sales, and they used those monies for the Philippine gold recovery and low-alpha lead projects, Twyman and V-7000 'participated in' TFF's unlawful sales within the meaning of A.R.S. § 44-2003(A)."[404]

291. The Division also argues that not only did Mr. Twyman and V-7000 participate in the securities sales, but they also induced the sales. "Induced" is defined as influencing an investor's decision to purchase securities by "offering for consideration the persuasive advantages or gains" of investing.[405] The Division contends that Mr. Twyman and V-7000 prepared and provided much of the offering material TFF used to solicit investors for the PGR and LAL Projects, stating: "Those materials certainly described the purported advantages and gains of investing through TFF in the low-alpha lead and gold recovery projects."[406]

292. Further, the Division claims that Mr. Twyman and V-7000 committed securities fraud in violation of A.R.S. § 44-1991(A). In August 2015, Mr. Twyman and V-7000 issued the "Ventures 7000 Official News Brief,"[407] in which they offered to sell additional revenue sharing units in the PGR

[401] *See Grand v. Nacchio*, 225 Ariz. 171 (2010).
[402] Division's Opening Post-Hearing Brief, page 62.
[403] Tr. at 1035.
[404] Division's Opening Post-Hearing Brief, page 63.
[405] *Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6 (App. 1996).
[406] Division's Opening Post-Hearing Brief, page 64.
[407] S-26.

Project. The Division asserts that Mr. Twyman and V-7000 committed fraud because they (1) failed to note in this offer that, although the PGR was touted as "poised for completion" once a $250,000 investment was received in June 2012 (funded by Mr. Brunt), the investment failed to pay any returns in the three intervening years; (2) failed to disclose the S.E.C. Judgment against Mr. Twyman; and (3) failed to disclose the 2008 California Desist and Refrain Order against Mr. Moss.

Mr. Twyman's and V-7000's Response

293. Mr. Twyman notes that, in addition to the portion of A.R.S. § 44-2003(A) cited by the Division, that statute goes on to state: "No person shall be deemed to have participated in any sale or purchase solely by reason of having acted in the ordinary course of that person's professional capacity in connection with that sale or purchase." Mr. Twyman cites to *Standard Charter*, which states that individuals who are liable under A.R.S. § 44-2003(A) "have in common that they undertake on behalf of sellers or purchasers to promote the sale. Each has a financial incentive to accomplish the sale, and each engages in the kind of purposeful persuasive effort described above," and that the words "'participated in or induced' must be read to require more than some collateral involvement in a securities transaction."[408]

294. Mr. Twyman and V-7000 first note that the TFF investment funds were received by Wycliffe—not Mr. Twyman and V-7000. According to Mr. Twyman and V-7000, Wycliffe used the funds pursuant to the terms of the JVFA for the PGR and LAL Projects. In addition, Mr. Twyman and V-7000 observe that Wycliffe was the signatory to the JVFA and was the entity that had a financial stake in the TFF investments. Further, Mr. Twyman and V-7000 claim that, while in existence at the time the JVFA was signed by Wycliffe, V-7000 was not operational when the TFF investments were solicited and was used simply as a "dba" for the Projects.

295. Mr. Twyman and V-7000 contend that even if they had a stake in the money raised by TFF, Arizona law requires more than ancillary involvement in the sale of the securities.[409] Mr. Twyman and V-7000 argue that if all that were required to establish liability under A.R.S. § 44-2003(A) is the receipt of money from an investment, then anyone who ever receives funds traceable to an investor

[408] *Standard Chartered,* at 22.

[409][409] Citing *Grand v. Nacchio*, 225 Ariz. 171 (2010). ("But even if the defendants benefitted substantially from the aftermarket stock purchases, it does not necessarily follow that they also participated in the sales." *Id.*, at 176.)

may be jointly and severally liable in Arizona. "Such a result is absurd and is no more logical than saying that if a criminal stole money and then purchased a vehicle, the vehicle dealer also participated in the criminal theft activity."[410] Mr. Twyman and V-7000 insist that simply receiving TFF investment funds does not equate to participation in the sale of the securities, especially since Mr. Twyman did not know any of the investors except Mr. Brunt.

296. Further, Mr. Twyman and V-7000 argue that they cannot be found to have participated because they were merely acting within the course of their professional capacity in managing the PGR and LAL Projects for Wycliffe. As such, "Mr. Twyman and V-7000's collateral involvement clearly falls within the safe harbor protection of A.R.S. § 44-2003(A)."[411]

297. Mr. Twyman and V-7000 also contend that they did not induce the securities sales. Mr. Twyman and V-7000 assert that:

> To "induce" means to "persuade" like "winning over by an appeal, entreaty, or expostulation addressed as much to feelings as to reason" or to "prevail" like overcoming "strong opposition or reluctance" with "sustained argument and entreaty;" it is "overcoming indifference, hesitation, or opposition…by offering for consideration persuasive advantages or gains that bring out a desired decision." Induce is not to be read "particularly expansively" and instead is given a much "narrower and more active construction.
>
> "[T]he statute is not so broad as to encompass 'any outsider to a securities transaction—no matter how remote from the transaction—who provided information that foreseeably contributed to, and thereby influenced, a buyer or seller's decision to engage in the transaction.' Instead, some 'purposeful persuasive effort' is required."[412]

298. Mr. Twyman and V-7000 conclude that if this were not the case, "anyone who contributed in any way to an offering document, like an attorney, could be jointly and severally liable under A.R.S. § 44-2003(A)."[413]

299. Mr. Twyman and V-7000 dispute the Division's assertion that they induced the TFF investments by preparing and then providing the offering materials to TFF that were used by to solicit investors in the PGR and LAL Projects. Mr. Twyman and V-7000 state, "[t]his is false and close attention must be paid regarding the provider, recipient, purpose, nature and timing of the documents

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[410] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 50.
[411] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 51.
[412] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 51, citing *Standard Chartered* at 22; *Facciola v. Greenberg Traurig LLP*, 2011 WL 2268950 at *2 (D. Ariz. June 9, 2011).
[413] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 52.

or lack, thereof, none of which the Division addressed."[414]

300. The V-7000 Financing Proposal Summary[415] for the PGR Project lists Wycliffe, ARSI and APMI on the cover page. Mr. Twyman and V-7000 assert that "Ventures 7000" is "merely used as a title or dba in this document and described as encompassing the interest of Wycliffe, ARSI and APMI.... Mr. Twyman provided this scaled down document seeking $250,000 in funding to TFF for TFF only at TFF's request."[416] Mr. Twyman and V-7000 insist that Mr. Moss gave the document to Mr. Brunt without Mr. Twyman's and V-7000's knowledge or authorization.

301. Mr. Twyman and V-7000 claim that the ERA Executive Summary regarding the LAL Project was prepared by TFF and provided to Mr. Olmstead. They note that this document does not reference Mr. Twyman or V-7000, only ERA, and states: "TFF has an exclusive opportunity with Wycliffe Trust & the ERA-JV."[417] In addition, the TFF "Business Proposal" for the LAL Project[418] was prepared by TFF and then provided to Mr. Olmstead; Mr. Twyman and V-7000 state that they had no hand in the document's contents, Further, it is not certain when this document was provided to Mr. Olmstead, and it could have been provided after Mr. Olmstead had already invested in the LAL Project.

302. The fourth investment document is the TFF/ERA document regarding the conversion of the interest in the LAL Project to Revenue Sharing in the PGR Project that was sent by TFF to various investors on April 26, 2013. Mr. Twyman and V-7000 assert that this document was prepared by TFF. Mr. Twyman and V-7000 argue that even though Mr. Moss stated that he cut and pasted some information received from Mr. Twyman into this document,[419] Arizona law states that simply providing information is not inducement; there must be a purposeful persuasive effort.[420] In addition, Mr. Twyman and V-7000 note that this document was sent to investors after they had already invested in the LAL Project. Thus, Mr. Twyman and V-7000 conclude that this document cannot be considered as an inducement for the sale of an investment under A.R.S. § 44-2003(A).

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[414] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 52.
[415] S-70.
[416] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 52.
[417] S-55.
[418] S-94.
[419] S-94 at 269, 278.
[420] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 55, citing *Facciolo*, 2011 WL 2268950 at *3.

303. The fifth document is the "Summary Financial Proposal" for the PGR Project from TFF to Dr. Bruner on April 26, 2013. Mr. Twyman and V-7000 note that they did not prepare this document, nor are they mentioned anywhere in the body of the document—only TFF, Wycliffe, ARSI, and APMI are referenced. Mr. Twyman and V-7000 contend that TFF prepared and provided this document to Dr. Bruner without Mr. Twyman's and V-7000's knowledge and consent. Further, they note that this document was sent to Dr. Bruner five months after he had already invested in the LAL Project. As such, they argue, this document cannot constitute an inducement for the sale of a security.

304. The final document is the "Ventures 7000 Official News Brief" from Mr. Moss to Dr. Bruner on August 13, 2015. Mr. Twyman and V-7000 assert that the news brief was intended as an update only for TFF and was sent to Dr. Bruner without Mr. Twyman's and V-7000's knowledge or authorization, and in contravention of the JVFA.

305. Mr. Twyman and V-7000 conclude that none of these documents:

> prove that Mr. Twyman and V-7000 somehow induced TFF's sale of the investments to any of TFF's investors, *i.e.*, undertook some purposeful, persuasive effort with respect to any investor let alone all of the them. The evidence shows that Mr. Twyman and V-7000 did not even know who the investors were other than Mr. Brunt. … Even if, *arguendo*, notwithstanding the narrow definition and interpretation of participate and induce, Mr. Twyman and V-7000 are found to have somehow participated in or induced the seven TFF investments (which they did not), they are not liable as they acted in the ordinary course of their professional capacity in connection therewith. *See* A.R.S. § 44-2003(A). Further, Mr. Twyman acted on behalf of his entities, not in his own personal capacity, and the Division has not presented any evidence to pierce the corporate veil and hold Mr. Twyman personally liable. Therefore, Mr. Twyman and V-7000 are not jointly and severally liable under A.R.S. § 44-2003(A).[421]

306. Mr. Twyman and V-7000 also dispute the Division's assertion that Mr. Twyman and V-7000 committed securities fraud in violation of A.R.S. § 44-1991(A) by offering in the August 15, 2015, V-7000 Official News Brief to sell additional revenue sharing units in the PGR Project without disclosing (1) Mr. Brunt's $250,000 investment in June 2012 had not paid any returns, (2) Mr. Twyman's S.E.C. Judgment, and (3) Mr. Moss' 2008 California Cease and Desist Order. First, Mr. Twyman and V-7000 note that the "news brief was simply an update sent by Mr. Covington, Director of Investors Relations at V-7000, only to TFF on August 12, 2015, about 2.5 years ***after*** Wycliffe

[421] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 58.

received the last funds, and was not intended for further distribution by TFF."[422] Mr. Twyman and V-7000 also note that the news brief was directed to existing partners about a future offering. The existing partner was TFF—not TFF's investors. And because the news brief was intended solely for TFF, Mr. Twyman and V-7000 assert that they did not authorize and were not aware that TFF shared the news brief with TFF investors. Mr. Twyman and V-7000 observe that despite the unauthorized distribution, none of TFF's investors called or sent funds to V-7000 as a result of the news brief.

307. Mr. Twyman and V-7000 note that the Division's fraud charges relate solely to A.R.S. § 44-1991(A)(2), allegations regarding an omission. Mr. Twyman and V-7000 contend that the Division has not identified any statement made by Mr. Twyman and V-7000 to any TFF investor that received the news brief that could be deemed misleading. Further, Mr. Twyman and V-7000 claim that the Division failed to clearly identify which TFF investors allegedly received the news brief.

308. Finally, Mr. Twyman and V-7000 note that Mr. Twyman did not send the news brief to TFF: "Mr. Covington did, and Mr. Twyman acted on behalf of V-7000, not in his own personal capacity, and the Division has shown no evidence to pierce the corporate veil and hold Mr. Twyman personally liable for V-7000's news brief.

Division's Reply

309. The Division first notes that in their Post-Hearing Brief, Mr. Twyman and V-7000 claim that the Division does not contend they have primary liability under A.R.S. §§ 44-1842 or 44-1991(A),[423] but rather, Mr. Twyman and V-7000 are liable solely through the application of A.R.S. § 44-2003(A). The Division denies this conclusion, pointing out that A.R.S. § 44-2003(A) imposes primary liability on any person who participated in or induced an unlawful sale. Noting that Mr. Twyman and V-7000 assert that, because they had no direct contact with TFF's investors (other than Mr. Brunt), they could not be deemed to have participated in or induced TFF's unlawful sales for the PGR or LAL Projects, the Division states:

> The Securities Act broadly authorizes enforcement actions against "any person … who made, ***participated in or induced*** the unlawful sale or purchase, and such persons shall be jointly and severally liable…." A.R.S. § 44-2003(A) (emphasis added). Consistent with the

[422] Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 58. Emphasis original.
[423] *See* Respondents Ventures 7000, LLC and Vernon R. Twyman, Jr.'s Post-Hearing Brief, page 47.

> Legislature's directive that "This Act shall not be given a narrow or restricted interpretation or construction, but shall be liberally construed,"[1] the Arizona Supreme Court recognizes that "This is sweeping language of inclusion." *Grand v. Nacchio*, 225 Ariz. 171, 175 ¶ 18 (2010). … Pursuant to A.R.S. § 44-2003(A), Twyman and V-7000 are jointly and severally liable with TFF for the unlawful sales … because they participated in and/or induced them.[424]

[1] Laws 1951, Ch. 18, § 20.

310. The Division reiterates that Mr. Twyman and V-7000 are liable for violations of the registration and anti-fraud provisions of the Securities Act for the unlawful sales of investments related to the PGR and LAL Projects because Mr. Twyman and V-7000 participated and induced the sales. The Division notes that Arizona courts have defined "participate" as "to take part in something (as an enterprise or activity) … in common with others," or "to have a share or part in something."[425] The Division contends that, contrary to Mr. Twyman's and V-7000's claims, under the JVFA with TFF, V-7000 was a party to the JVFA because it collectively defined V-7000, the Wycliffe Trust, ARSI, APMI, and ERA as "Wycliffe."[426] Further, the JVFA outlined that V-7000 and the other parties would undertake three projects: "Ventures 7000 Treasure Recovery," "Ventures 7000 Gold Buying and Selling," and "Low-Alpha Lead Buying and Selling." In addition, the Division notes that the JVFA stated that 93 percent of the proceeds from TFF's investors would be used to fund these ventures, which was confirmed by Mr. Twyman at hearing.[427] The Division concludes that JVFA establishes that V-7000 "[took] part in something," (the Projects) and "in common with others,"[428] (TFF). V-7000 "stood to gain financially when investors invested through TFF in the Philippine gold and low-alpha lead projects. Indeed, funding those projects was the central purpose of TFF's sales."[429]

311. The Division disputes Mr. Twyman's and V-7000's assertion that the Wycliffe Trust received the $650,000 in wires from TFF's sales to investors, not Mr. Twyman and/or V-7000. The Division asserts that the evidence shows that a wire on June 21, 2012, was for "VERN TWYMAN REF: VENTURE 7000."[430] And, the Division notes, despite Mr. Twyman's claims that he transferred

[424] Division's Reply Post-Hearing Memorandum Re: Respondents Vernon R. Twyman, Jr. and Ventures 7000, LLC, page 2. Emphasis original.
[425] Citing *Grand*, at 175; *Standard Chartered*, at 21.
[426] S-114.
[427] Tr. at 873 – 874.
[428] *Grand*, at 175.
[429] Division's Reply Post-Hearing Memorandum Re: Respondents Vernon R. Twyman, Jr. and Ventures 7000, LLC., page 4.
[430] S-45.

the money to an account for the Wycliffe Trust, he did not present any evidence to support that claim. Further, the Division asserts that Mr. Twyman's and V-7000's assertion is simply one of form over substance because Mr. Twyman owns the Wycliffe Trust and was the signer on Wycliffe's bank accounts.[431] Importantly, because the money received from TFF for the projects was pooled, V-7000 received at least some of the investors' funds, and Mr. Twyman admitted that he used some of the funds to pay himself compensation and some of his personal expenses.[432]

312. The Division contends that Mr. Twyman and V-7000 are mistaken in citing *Grand* for their argument that "participation" requires active involvement in the sale, as well as having a stake in the proceeds of the sale. The Division explains that in *Grand*, the defendants actively encouraged the plaintiff to buy shares in a third-party corporation because they met with the plaintiff's co-trustee and provided misleading information about the financial health of the third-party corporation. The court found that despite the defendants' active role in encouraging the plaintiff to invest, the defendants did not actually participate in the sales; rather, the defendants' actions were "classic inducement," but not deemed "participation."[433] Unlike the defendants in *Grand*, Mr. Twyman and V-7000 received substantial moneys from TFF's investors. The Division argues that, at a minimum, Mr. Twyman participated in TFF's unlawful sales to investors by using some of the proceeds from TFF to pay himself compensation and some personal expenses.[434] The Division asserts that "V-7000's contracting to receive and then use the investors' funds was not merely 'tangential' or 'collateral' to TFF's unlawful securities sales. To the contrary, V-7000's activities were the central purpose of TFF making those sales."[435]

313. The Division also believes that Mr. Twyman and V-7000 participated in the unlawful sales by "creating written misrepresentations which are used to induce the sale," thereby simultaneously inducing and participating in an unlawful sale.[436] The Division observes that Mr.

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[431] Tr. at 649; S-96.
[432] Tr. at 764.
[433] *Grand*, at 174 – 176.
[434] Tr. at 764.
[435] Division's Reply Post-Hearing Memorandum Re: Respondents Vernon R. Twyman, Jr. and Ventures 7000, LLC., page 4.
[436] Richard G. Himelrick & Brian J. Schulman, *Arizona Securities Fraud Liability: Statutory and Common Law Remedies*, at § 5.1.1, p. 103, n. 751 (3rd Ed. 2009); *Grand*, at 175.

Twyman prepared and gave to TFF the V-7000 Financing Proposal Summary, which Mr. Moss and TFF then gave to Mr. Brunt to solicit him to invest $250,000 in the PGR Project.[437]

314. The Division rejects Mr. Twyman's claims that V-7000 was used only as a "dba," and also that the V-7000 Financing Proposal Summary was confidential and for TFF's eyes only. The Division observes that V-7000 was in existence at the time the V-7000 Financing Proposal Summary was given to TFF, and the JVFA describes V-7000 as an "international joint venture entity that encompasses the business interests of the Wycliffe Trust, Advanced Recovery Systems and Asian Precious Metals in the Republic of the Philippines. Ventures 7000 will be referred to hereinafter as 'The Company.'"[438] As for the claim that the document was confidential, the Division notes that the V-7000 Financing Proposal Summary is not marked "confidential" or "for TFF eyes only."

315. The Division further contends that the V-7000 Financing Proposal Summary mispresented that the gold recovery sites were "poised for completion…. Both targets are now ready to move into the recovery stage…. [W]e are in need of additional capital to bring these two sites to completion."[439] The V-7000 Financing Proposal Summary stated that approximately $250,000 was needed "to complete the funding of the Bay Project and pinpoint the gold bullion," and "[t]he total amount of time necessary to complete this recovery and generate proceeds therefrom will be less than 120-days from the time that full funding is in place."[440] However, according to the Division, the V-7000 Financing Proposal Summary failed to disclose that, although Mr. Twyman had been working to recover the gold hidden in the Philippines since the 1980's, neither he nor any of his companies—including V-7000, had ever recovered any gold, or paid any returns to any investors. The Division concludes that the failure to disclose this information constitutes a material omission. In addition, the Division believes that Mr. Twyman's lack of success over 30 years to recover the treasure shows that there was no factual basis for the claims that V-7000 would complete the project within 120 days. As such, the Division asserts that these claims were actionable as material misrepresentations and omissions under Arizona securities anti-fraud statutes.

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[437] S-69 at 21; S-94 at 214 – 216.
[438] S-70.
[439] S-70.
[440] S-70.

316. The Division also points out that the V-7000 Financing Proposal Summary claimed that an investor who provided the $250,000 would receive "an estimated return of 9.5 to 1 within 6 to 9 months of total funding and a combined estimated return from both the Bay Project and Bahama Mama Project of 45 to 1 over an 18 to 24 month period."[441] The Division states that these "out-sized" claims are fraudulent given Mr. Twyman's failure to recover any gold or pay any returns throughout 30 years of alleged searches.[442]

317. As for the LAL Project, the Division notes that Mr. Twyman and V-7000 also provided the offering materials regarding that Project to TFF. TFF then placed its information on the materials, which it then gave to Mr. Olmstead to solicit his $100,000 investment.[443]

318. The Division argues that by preparing these materials, Mr. Twyman and V-7000 also induced TFF's unlawful sales within the meaning of A.R.S. § 44-2003(A) because offering materials are "a solicitation to invest. They are 'designed to induce outside investors to buy securities.'"[444]

319. The Division asserts that the provided materials used by TFF to solicit investors for the PGR and LAL Projects, as well as the August 2015 revenue sharing solicitation, violated A.R.S. § 44-1991(A)(2) by failing to disclose the S.E.C. Judgment against Mr. Twyman and the 2008 California Desist and Refrain Order against Mr. Moss. The Division asserts that these Orders are information that reasonable investors would want to know in reaching a decision to invest. The failure to include this information is a further violation of the anti-fraud provisions.

320. The Division also contests Mr. Twyman's and V-7000's claim that they fall under the safe harbor provision of A.R.S. § 44-2003(A). Rather, the Division claims that the creation and inclusion of the alleged fraudulent statements constitute non-ordinary service; therefore, Mr. Twyman and V-7000 are liable under the anti-fraud statutes.[445] The Division notes that in *Facciola*, the court

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[441] S-70.

[442] Division's Reply Post-Hearing Memorandum Re: Respondents Vernon R. Twyman, Jr. and Ventures 7000, LLC., page 10. (*See G & M, Inc. v. Newbern*, 488 F.2d 72 (9th Cir. 1973). Gross disparity between projection and fact made projection actionable securities fraud.)

[443] S-94.

[444] *Facciola v. Greenberg Traurig LLP*, 2011 WL 2268950 at *3, n.6 (D. Ariz. 2011). (Quoting *O'Melveny & Myers*, 969 F.2d 744 (9th Cir. 1992).

[445] Division's Reply Post-Hearing Memorandum Re: Respondents Vernon R. Twyman, Jr. and Ventures 7000, LLC., page 14, citing Richard G. Himelrick & Brian J. Schulman, *Arizona Securities Fraud Liability: Statutory and Common Law Remedies* at § 5.1.1, page 105 (3rd Ed. 2009), "By implication, persons who engage in non-ordinary services like, for example, knowingly creating false statement for use in sales materials, may be liable as statutory participants."

held that § 44-2003(A)'s safe harbor provision did not apply to a law firm that prepared "documents that were primarily designed to solicit investors," reasoning that: "This work is not merely 'tangentially' related to the sale of the securities, but instead is a key component to the investor solicitation."[446] The Division concludes that, because Mr. Twyman and V-7000 prepared the key materials used by TFF to solicit investors in the PGR and LAL Projects, the safe harbor provision does not apply.

321. Finally, the Division asserts that Mr. Twyman's and V-7000's position that the Commission should apply a narrow definition and interpretation of "participate and induce" is contrary to the Legislature's intent that the Securities Act not be given a narrow or restricted interpretation. Instead, the Legislature directed that the Securities Act "shall be liberally construed as a remedial measure in order not to defeat the purpose thereof."[447]

Resolution

322. Although Mr. Twyman did not meet any of the investors in the PGR and LAL Projects except for Mr. Brunt, Mr. Twyman and V-7000 prepared and provided the informational materials to TFF that TFF then used to solicit investors in those Projects. The information included by Mr. Twyman and V-7000 in the materials contained historic and scientific details that TFF likely could not have adequately conveyed to investors to induce the sale of the securities. Further, V-7000's activities were not "tangential" or "collateral" to TFF's unlawful securities sales – they were the central purpose of the sales. We agree with the Division that the Projects' completion and investment return projections were misleading, and that failure to include information regarding the prior securities orders and the lack of success after Mr. Brunt's $250,000 investment, were material omissions.

323. Accordingly, for the reasons set forth in paragraphs 290 and 291, and in paragraphs 310 through 321, we find that Mr. Twyman and V-7000 participated in and induced TFF's unlawful sales to six investors in the PGR and LAL Projects between June 21, 2012, and December 19, 2012; and pursuant to A.R.S. § 44-2003(A), Mr. Twyman and V-7000 are liable for the violations of the Securities Act's registration and anti-fraud provisions, A.R.S. §§ 44-1841, 44-1842, and 44-1991(A), for those

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[446] *Facciola* at 2011 WL 2268950 at *4.
[447] Laws 1951, Ch.18, § 20.

sales.

KEVIN KRAUSE

324. The Division contends that Mr. Krause participated in and induced TFF's securities sales to Mr. Flores for the LAL Project, for which he received a $1,000 check from Mr. McHatton's QSR bank account after Mr. Flores invested $44,000.[448] In addition, Mr. Krause also induced TFF's securities sale to Mr. and Mrs. DeSisto.[449] Thus, the Division argues that pursuant to A.R.S. § 44-2003(A), Mr. Krause is liable for the registration and anti-fraud violations arising from those sales.

325. In his Answer, Mr. Krause simply denied that allegations against him without presenting any evidence or legal support for his claim.[450]

326. Based on the evidence presented, we find that Mr. Krause induced and participated in TFF's securities sale to Mr. Flores, and induced TFF's securities sale to Mr. and Mrs. DeSisto, and is liable for the registration and anti-fraud violations arising from those sales.

CONTROL PERSON LIABILITY

327. The Division stresses that not only are Mr. Moss and Mr. McHatton liable for their individual violations of the anti-fraud provisions of the Securities Act, but they are also liable for all of TFF's anti-fraud violations. The Division alleges that Mr. Twyman was also liable for V-7000's anti-fraud violations.

328. The Division notes that A.R.S. § 44-1999(B) imposes presumptive liability "on those persons who have the *power* to directly or indirectly control the activities of those persons or entities liable as primary violators of A.R.S. § 44-1991."[451] To establish whether a person is a control person, the evidence must show that the alleged control person "had the power, either individually or as part of a control group, to control the activities of the primary violator."[452]

329. The Division states that it presented evidence that Mr. Moss and Mr. McHatton were TFF's managing directors, and notes that Mr. Moss testified that he and Mr. McHatton controlled TFF

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[448] Tr. at 467; S-38.
[449] Tr. at 387 – 389.
[450] Krause Answer, page 1.
[451] *Eastern Vanguard Forex Ltd. V. Ariz. Corp. Comm'n*, 206 Ariz. 399 (Appl 2003) (emphasis in original).
[452] *Eastern Vanguard* at 412.

and decided which joint ventures and investment opportunities TFF would pursue.[453]

330. The Division notes that Mr. Twyman testified that he was the controlling person of V-7000.[454]

331. Accordingly, the Division asserts that, pursuant to A.R.S. § 44-1999(B), Mr. Moss and Mr. McHatton are jointly and severally liable to the same extent as TFF for that entity's violations of A.R.S. § 44-1991, and Mr. Twyman is jointly and severally liable to the same extent as V-7000 for that entity's violations of A.R.S. § 44-1991.

332. Mr. Twyman and V-7000 deny that there is any control person liability under A.R.S. § 44-1999(B). Mr. Twyman and Ventures 7000 note that Mr. Twyman does not dispute that he is V-7000's control person. However, they assert that because V-7000 is not liable under A.R.S. § 44-1991(A) for the August 2015 news brief, there can be no control person liability. Even assuming that there is liability under that statute, Mr. Twyman and V-7000 argue that no liability exists under A.R.S. § 44-1999(B) because Mr. Twyman "acted in good faith and did not directly or indirectly induce the act underlying the action."[455] Mr. Twyman and V-7000 observe that it was Mr. Covington, Director of Investor Relations at V-7000, not Mr. Twyman, who sent the news brief to TFF, and that it was intended only for TFF. As such, Mr. Twyman and V-7000 conclude that Mr. Twyman is not liable as a control person of V-7000 under A.R.S. § 44-1999(B) for V-7000's alleged direct violations of A.R.S. § 44-1991 as a result of the August 2015 news brief.

333. The Division disputes Mr. Twyman's assertion that he "acted in good faith and did not directly or indirectly induce the act underlying the action." The Division argues that in order to use this defense, it is not enough for the controlling person to demonstrate a lack of participation or actual knowledge of the violations of A.R.S. § 44-1991(A). The controlling person "must establish that they exercised due care by taking reasonable steps to 'maintain and enforce a reasonable and proper system of supervision and internal control(s)."[456] The Division notes that Mr. Twyman did not present any evidence that he took any steps to maintain proper supervision and internal controls. In addition,

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[453] Tr. at 1183.
[454] Tr. at 951.
[455] A.R.S. § 44-1999(B).
[456] *Eastern Vanguard* at 414.

according to the Division, "[a]ccepting Twyman's argument that he is not liable as V-7000's controlling person would exculpate any controlling person who did not actually participate in the fraudulent activity. That would be contrary to Arizona law."[457] The Division concludes that, as V-7000's controlling person, Mr. Twyman had the authority to control the actions and activities of V-7000 and its members, employees, and agents, which includes its director of investor relations.

334. Given the evidence and testimony presented, we find that, pursuant to A.R.S. § 44-1999(B), Mr. Moss and Mr. McHatton are jointly and severally liable to the same extent as TFF for that entity's violations of A.R.S. § 44-1991. We further find that, as the controlling person of V-7000, Mr. Twyman had the legal power to control the activities of the director of investor relations, but Mr. Twyman presented no evidence that he took any steps to "maintain and enforce a reasonable and proper system of supervision and internal control."[458] Thus, Mr. Twyman is jointly and severally liable to the same extent as V-7000 for that entity's violations of A.R.S. § 44-1991 pursuant to A.R.S. § 44-1999(B).

MARITAL COMMUNITY LIABILITY

335. The Division asserts that the marital communities of Robert and Jennifer Moss, and of Jeffrey and Starla McHatton, are subject to liability under the Securities Act.

336. Pursuant to A.R.S. § 25-214(B), during their marriage, "spouses have equal management, control and disposition rights over their community property and have equal power to bind the community." Further, A.R.S. § 25-215(D) allows that, "[e]xcept as prohibited in section 25-214, either spouse may contract debts and otherwise act for the benefit of the community." In addition, there is a presumption that all property debts acquired during the marriage, by either spouse, is for the community,[459] and any debt obtained by one spouse is therefore a debt of the community. This presumption may be overcome by a respondent presenting clear and convincing evidence that the debt should not be a debt of the community.[460] The Division notes that no Respondent presented any evidence rebutting this presumption.

337. The Division asserts that, under Arizona law, all debts arising through Mr. Moss', Mr.

[457] Division's Reply Post-Hearing Memorandum Re: Respondents Vernon R. Twyman, Jr. and Ventures 7000, LLC., page 17. *See Eastern Vanguard* at 411.
[458] *Eastern Vanguard* at 411.
[459] *Johnson v. Johnson*, 131 Ariz. 38 (1981).
[460] *Hrudka v. Hrudka*, 186 Ariz. 84 (App. 1995).

McHatton's, and TFF's unlawful securities sales, and including any restitution and administrative penalties, are community obligations.

338. Mr. McHatton asserts that he and Mr. Moss and their respective marital communities may not be held liable for restitution and administrative penalties because Article VIII of TFF's Articles of Incorporation states: "The private property of the members, officers and directors of this corporation shall be forever exempt from liability for debts and obligations of the corporation."[461] The Division notes that Mr. McHatton does not point to any authority for the proposition that an entity can immunize its principles from liability for violations of the Securities Act. The Division argues that if Mr. McHatton's position were valid, "every fraudster would be able to immunize himself from liability by forming a corporation or limited liability company and including similar exculpatory language in the articles of incorporation or organization."[462]

339. We find that the Respondents did not present any evidence to overcome the presumption that the debts arising from Mr. Moss', Mr. McHatton's and TFF's unlawful sales, including any restitution and administrative penalties, are community obligations of Robert J. Moss and Jennifer L. Moss, and Jeffrey D. McHatton and Starla McHatton.

REMEDIES

Restitution

340. The Division argues that the Commission has broad authority to order Respondents to remedy violations of the Securities Act. The Division contends that the Respondents should pay restitution and administrative penalties for their violations of the Securities Act, and seeks the entry of cease and desist orders against the Respondents for future violations.

341. The Division asserts that the twelve investors who invested in TFF's various projects have not been repaid $1,242,024.17 of the principal they invested. The Division argues that, pursuant to A.R.S. §§ 44-2032(1) and 44-2003(A), Mr. Moss, Mr. McHatton, Mr. Sproat, and TFF should be ordered to pay restitution in the principal amount of $1,242,024.17, jointly and severally. The Division further contends that Mr. Moss and Mr. McHatton, as primary violators of the anti-fraud provisions of

[461] S-4.

[462] Division's Reply Post-Hearing Memorandum Re: Respondents Robert J. Moss and Jennifer L. Moss, Jeffrey D. McHatton and The Fortitude Foundation, page 8.

A.R.S. § 44-1991(A), and as control persons of TFF, which also violated the anti-fraud provisions A.R.S. § 44-1991(A), should be ordered to be jointly and severally liable with TFF for its violations of A.R.S. § 44-1991(A).

342. The Division argues that pursuant to A.R.S. §§ 44-2032(1) and 44-2003(A), Mr. Krause should be ordered to pay restitution in the principal amount of $144,000, jointly and severally with Mr. Moss, Mr. McHatton, Mr. Sproat, and TFF, consisting of the $44,000 that Mr. Flores is owed for his investment, and the $100,000 that Mr. and Mrs. DeSisto are owed for their investment. These amounts have not been repaid to these investors.

343. The Division asserts that pursuant to A.R.S. §§ 44-2032(1) and 44-2003(A), Mr. Twyman and V-7000 should be ordered to pay restitution in the principal amount of $744,474.17, jointly and severally with Mr. Moss, Mr. McHatton, Mr. Sproat, and TFF. The $744,474.17 restitution amount for Twyman and V-7000 consists of the following amounts that have not been repaid to investors in the PGR and LAL Project. The Division further contends that Mr. Twyman, as a primary violator of the anti-fraud provisions of A.R.S. § 44-1991(A), and as control persons of V-7000, which also violated the anti-fraud provisions A.R.S. § 44-1991(A), should be ordered to be jointly and severally liable with V-7000 for its violations of A.R.S. § 44-1991(A).

344. Mr. Twyman and V-7000 contend that they should be liable for a lesser amount because they received only $650,000 of the $750,000 invested in the PGR and LAL Projects.[463]

345. The Division notes that this is contrary to Arizona law: "Nothing in A.R.S. § 44-2032 limits the amount of restitution that can be ordered to the benefits 'pocketed' by the wrongdoer; on the contrary, the statute specifically states the relief is 'without limitation.'"[464]

346. We find that, pursuant to A.R.S. § 44-2032, Mr. Twyman and V-7000 are jointly and severally liable with Mr. Moss, Mr. McHatton, Mr. Sproat, and TFF for the $744,474.17 in restitution.

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[463] Venture's 7000, LLC and Vernon Twyman, Jr.'s Post-Hearing Brief, page 62.
[464] *Hirsch v. Ariz. Corp. Comm'n*, 237 Ariz. 456 (2015).

347. Based on findings above, we find that the Respondents are liable for restitution in the following amounts:

Investor	Date	Amount	Description	Amount Returned	Parties Liable
Brunt	6/21/2012	$250,000	PGR Project	$2,000	Moss, McHatton, Sproat, TFF, Twyman, V-7000
Brunt	7/6/2012	$111,800	Brazilian Bond		Moss, McHatton, Sproat, TFF
Brunt	8/27/2012	$18,000	TFF Promissory Note		Moss, McHatton, Sproat, TFF,
Brunt	10/30/2012	$125,000	LAL Project		Moss, McHatton, Sproat, TFF, Twyman, V-7000
Mannino	10/31/2012	$75,000	LAL Project	$1,687.50	Moss, McHatton, Sproat, TFF, Twyman, V-7000
Olmstead	11/14/2012	$100,000	LAL Project		Moss, McHatton, Sproat, TFF, Twyman, V-7000
Clark	11/20/2012	$50,000	LAL Project	$200	Moss, Mc Hatton, Sproat, TFF, Twyman, V-7000
Bruner	12/4/2012	$100,000	LAL Project	$888.33	Moss, McHatton, Sproat, TFF, Twyman, V-7000
Spencer	12/19/2012	$50,000	LAL Project	$750	Moss, McHatton, Sproat, TFF, Twyman, V-7000
Bentz	1/8/2013	$50,000	LAL Project		Moss, McHatton, Sproat, TFF
Flores	4/25/2013 – 5/23/2013	$44,000	LAL Project		Moss, McHatton, Sproat, TFF, Krause
DeSisto	5/16/2013	$100,000	Chinese Bonds		Moss, McHatton, Sproat, TFF, Krause
Stadheim	8/6/2013	$25,000	TFF Promissory Note		Moss, McHatton, Sproat, TFF
Linnebach	8/23/2013	$30,000	TFF Promissory Note		Moss, McHatton, Sproat, TFF
Billy	9/24/2014 – 10/7/2014	$100,000	African Diamond		Moss, McHatton, Sproat, TFF
		$1,228,800		**$(5,525.83)**	

Administrative Penalties

348. Pursuant to A.R.S. § 44-2036, the Commission may assess an administrative penalty of up to $5,000 for each violation of the Securities Act.

349. The Division calculates that Mr. Moss, Mr. McHatton, Mr. Sproat and TFF each made 16 securities sales totaling $1,247,550.00; as such, Mr. Moss, Mr. McHatton, Mr. Sproat and TFF

committed at least 48 violations of the Securities Act.[465] The Division requests that the Commission direct Mr. Moss, Mr. McHatton, Mr. Sproat and TFF each to pay an administrative penalty of $240,000. (48 x $5,000 = $240,000).

350. The Division calculates that Mr. Krause committed at least nine violations of the Securities Act in the securities sales to Mr. Flores and Mr. and Mrs. DeSisto. The Division requests that the Commission order Mr. Krause to pay an administrative penalty of $45,000. The Division notes that this amount is especially warranted because Mr. Krause continued to make unlawful securities offers and sales despite two prior Commission Orders directing him to cease and desist his activity.

351. The Division argues that Mr. Twyman and V-7000 participated in and/or induced seven sales of TFF's securities for the PGR and LAL Project, and each sale involved violations of A.R.S. §§ 44-1841, 44-1842, and 44-1991(A). The Division claims that Mr. Twyman is a "recidivist" and asserts that Mr. Twyman and V-7000 do not accept any responsibility for their violations of the Securities Act, and express no remorse for any of the investors. As such, the Division requests that the Commission direct Mr. Twyman and V-7000 to jointly and severally pay and administrative penalty of $35,000.

352. Based on the testimony and evidence presented in this case, although Mr. McHatton's organization TFF was the main entity through which the investments were undertaken, we find that much of the misleading and fraudulent activity was committed by Mr. Moss and Mr. Sproat.

353. In addition to his other violations, Mr. Krause violated two Commission Orders by participating in and inducing the unlawful securities sales. Considering the totality of the circumstances, we find that the following administrative penalties are appropriate:

- Mr. Moss, and the marital community of Robert and Jennifer Moss – $30,000.
- Mr. Sproat – $30,000.
- Mr. McHatton, TFF, and the marital community of Jeffrey and Starla McHatton – $5,000.
- Mr. Krause – $10,000.
- Mr. Twyman and V-7000 – $5,000.

[465] The Division alleges 16 violations per Respondent of A.R.S. § 44-1841; 16 violations per Respondent of A.R.S. § 44-1842; 16 violations per Respondent of A.R.S. § 44-1991(A), although the Division alleges that there were multiple fraudulent acts in each of the 16 sales.

Cease and Desist

354. Pursuant to A.R.S. § 44-2032, the Division requests that the Commission order all Respondents, and any of the Respondents' agents, employees, successors and assigns, to permanently cease and desist from violating the Securities Act.

355. Given the testimony and evidence presented in this case and the evidence presented, we find that the Division's request is reasonable.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et seq*.

2. The investment offerings in the form of investment contracts, promissory notes, and or stock, and sold within or from Arizona, by Mr. Moss, Mr. McHatton, Mr. Sproat, Mr. Krause, and TFF constitute securities within the meaning of A.R.S. § 44-1801.

3. Mr. Moss, Mr. McHatton, Mr. Sproat, Mr. Krause, and TFF failed to meet their burden of proof pursuant to A.R.S. § 44-2033 or A.R.S. § 44-1843(A)(6) to establish that the securities offered and sold were exempt from regulation under the Securities Act.

4. Mr. Moss, Mr. McHatton, Mr. Sproat, Mr. Krause, and TFF violated A.R.S. § 44-1841 by offering and selling securities that were neither registered nor exempt from registration.

5. Mr. Moss, Mr. McHatton, Mr. Sproat, Mr. Krause, and TFF violated A.R.S. § 44-1842 by offering and selling securities while not being registered as dealers or sales persons.

6. Pursuant to A.R.S. § 44-2003(A), Mr. Twyman and V-7000 participated in and induced the unlawful sale of securities in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

7. The Respondents committed fraud in the offer and sale of securities in violation of A.R.S. § 44-1991.

8. Mr. Moss and Mr. McHatton directly or indirectly controlled TFF, within the meaning of A.R.S. § 44-1999, and are jointly and severally liable with TFF for violations of A.R.S. § 44-1991.

9. Mr. Twyman directly or indirectly controlled V-7000, within the meaning of A.R.S. § 44-1999, and is jointly and severally liable with V-7000 for violations of A.R.S. § 44-1991.

10. The Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. §

44-2032.

11. The Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308, and for which the respective marital communities of Robert and Jennifer Moss, and Jeffrey and Starla McHatton, should be jointly and severally liable as a community obligation.

12. The Respondents' conduct is grounds to order administrative penalties pursuant to A.R.S. § 44-2036, and for which the respective marital communities of Robert and Jennifer Moss, and Jeffrey and Starla McHatton, should be jointly and severally liable as a community obligation.

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Robert J. Moss and Jennifer L. Moss, The Fortitude Foundation, Jeffrey D. McHatton and Starla T. McHatton, Robert B. Sproat and Jane Doe Sproat, Kevin Krause, Ventures 7000, LLC, and Vernon R. Twyman, Jr., and any of Respondents' agents, employees, successors and assigns, shall cease and desist from their actions in violation of the Securities Act.

IT IS FURTHER ORDERED that pursuant to A.R.S. §§ 44-2031(c) and 44-2036, Robert J. Moss, Jeffrey D. McHatton, Robert B. Sproat, and The Fortitude Foundation, as their sole and separate obligations; Robert J. Moss and Jennifer L. Moss, as a community obligation; and Jeffrey D. McHatton and Starla T. McHatton, as a community obligation; shall pay restitution in the principal amount of $1,242,024.17, jointly and severally, within 180 days of the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308, subject to legal setoffs by the Respondents and confirmed by the Director of Securities.

IT IS FURTHER ORDERED that pursuant to A.R.S. §§ 44-2032 and 44-2036, Kevin Krause shall pay restitution in the principal amount of $144,000.00, jointly and severally, with Robert J. Moss, Jeffrey D. McHatton, Robert B. Sproat, The Fortitude Foundation, and the respective marital communities of Robert J. Moss and Jennifer L. Moss, and Jeffrey D. McHatton and Starla T. McHatton, within 180 days of the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308, subject to legal setoffs by the Respondents and confirmed by the Director of Securities.

IT IS FURTHER ORDERED that pursuant to A.R.S. §§ 44-2032 and 44-2036 Vernon R.

Twyman, Jr. and Ventures 7000, LLC shall pay restitution in the principal amount of $744,474.17, jointly and severally with Robert J. Moss, Jeffrey D. McHatton, Robert B. Sproat, The Fortitude Foundation, and the respective marital communities of Robert J. Moss and Jennifer L. Moss, and Jeffrey D. McHatton and Starla T. McHatton, within 180 days of the effective date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308, subject to legal setoffs by the Respondents and confirmed by the Director of Securities.

IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an interest-bearing account(s), if appropriate, until distributions are made.

IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or any publication that may supersede it on the date that the judgment is entered.

IT IS FURTHER ORDERED that the Commission shall disburse the funds on a *pro rata* basis to investors shown on the records of the Commission. Any restitution funds that the Commission finds it cannot disburse because an investor refuses to accept payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time distribution, shall be disbursed on a *pro rata* basis to the remaining investors shown on the records of the Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the State of Arizona.

IT IS FURTHER ORDERED pursuant to authority granted to the Commission under A.R.S. §§ 44-2031(c) and 44-2036, Robert J. Moss, as his sole and separate obligation; and Robert J. Moss and Jennifer L. Moss, as a community obligation, shall pay an administrative penalty of $30,000. The payment obligations for this administrative penalty shall be subordinate to any restitution obligations and shall become immediately due and payable only after restitution payments have been paid in full or upon default with respect to Robert J. Moss, and the marital community of Robert J. Moss and Jennifer L. Moss' restitution obligations. The administrative penalties shall be payable by either cashier's check or money order, payable to "the State of Arizona" and presented to the Arizona

Corporation Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED pursuant to authority granted to the Commission under A.R.S. §§ 44-2032 and 44-2036, Robert B. Sproat shall pay an administrative penalty of $30,000. The payment obligations for this administrative penalty shall be subordinate to any restitution obligations and shall become immediately due and payable only after restitution payments have been paid in full or upon default with respect to Robert B. Sproat's restitution obligations. The administrative penalties shall be payable by either cashier's check or money order, payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED pursuant to authority granted to the Commission under A.R.S. §§ 44-2031(c) and 44-2036, The Fortitude Foundation; Jeffrey D. McHatton, as his sole and separate obligation; and Jeffrey D. McHatton and Starla T. McHatton, as a community obligation, shall pay and administrative penalty of $5,000. The payment obligations for this administrative penalty shall be subordinate to any restitution obligations and shall become immediately due and payable only after restitution payments have been paid in full or upon default with respect to Jeffrey D. McHatton, The Fortitude Foundation, and the marital community of Jeffrey D. McHatton and Starla T. McHatton's, restitution obligations. The administrative penalties shall be payable by either cashier's check or money order, payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED pursuant to authority granted to the Commission under A.R.S. §§ 44-2032 and 44-2036, Kevin Krause shall pay an administrative penalty of $10,000. The payment obligations for this administrative penalty shall be subordinate to any restitution obligations and shall become immediately due and payable only after restitution payments have been paid in full or upon default of Kevin Krause's restitution obligations. The administrative penalties shall be payable by either cashier's check or money order, payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED pursuant to authority granted to the Commission under A.R.S. §§ 44-2032 and 44-2036, Vernon R. Twyman and Ventures 7000, LLC shall pay an administrative penalty of $5,000. The payment obligations for this administrative penalty shall be subordinate to any

restitution obligations and shall become immediately due and payable only after restitution payments have been paid in full or upon default of Vernon R. Twyman and Ventures 7000, LLC's restitution obligations. The administrative penalties shall be payable by either cashier's check or money order, payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED that if a Respondent fails to pay the administrative penalty as directed in the Orders above, any outstanding balance, plus interest at the rate of the lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or any publication that may supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately due and payable, without further notice.

IT IS FURTHER ORDERED that default shall render the defaulting Respondent liable to the Commission for its costs of collection and interest at the rate of the lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15 or any publication that may supersede it, on the date that the judgment is entered.

IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. The acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

IT IS FURTHER ORDERED that if any Respondent fails to comply with this Decision, the Commission may bring further legal proceedings against that Respondent(s), including application to the Superior Court for an Order of Contempt.

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IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the Commission may grant rehearing of this Decision. The application must be received by the Commission at its offices within twenty (20) calendar days after entry of this Decision and, unless otherwise ordered, filing an application for rehearing does not stay this Decision. If the Commission does not grant a rehearing within twenty (20) calendar days after the filing of the application, the application is considered to be denied. No additional notice will be given of such denial.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

RECUSED

CHAIRMAN BURNS COMMISSIONER DUNN COMMISSIONER KENNEDY

COMMISSIONER OLSON COMMISSIONER MÁRQUEZ PETERSON

IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 10 day of February 2020.

MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
BAM/gb

SERVICE LIST FOR: ROBERT J. MOSS, JENNIFER L. MOSS, THE FORTITUDE FOUNDATION, VENTURES 7000, LLC, JEFFREY D. McHATTON AND STARLA T. McHATTON, ROBERT D. SPROAT AND JANE DOE SPROAT, KEVIN KRAUSE, and VERNON R. TWYMAN, JR.

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